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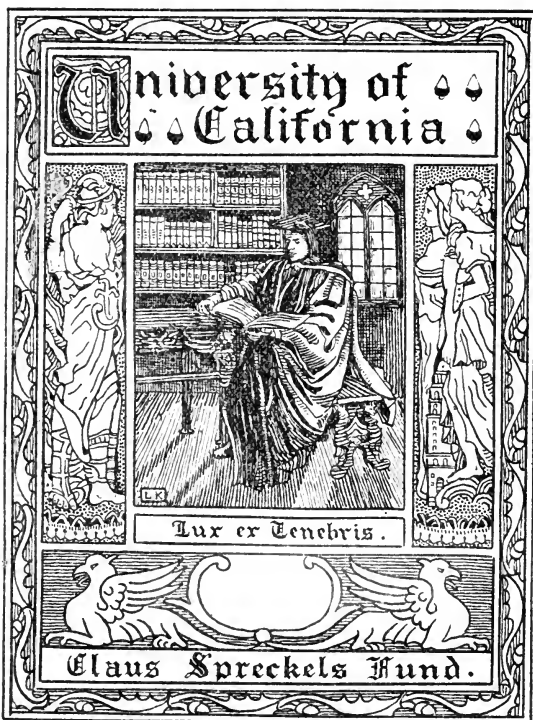
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THE
LAW AND PRACTICE
OF THE
STOCK EXCHANGE.
WITH APPENDICES.

CONTAINING
*THE RULES AND REGULATIONS ANNOTATED,
AND FORMS OF INSTRUMENTS ACCOMPANYING
A MORTGAGE OF SECURITIES.*

BY
B. E. SPENCER BRODHURST, M.A., B.C.L.
OF THE INNER TEMPLE, BARRISTER-AT-LAW.



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SPRECKELS

PREFACE.

At the present day, operations upon the Stock Exchange are conducted upon so vast and complex a scale, and so intimately affect the interests of the public, that a fresh attempt to explain the rules which regulate the conduct of business between member and member, and to elucidate the legal principles which govern the relations of members with the public, perhaps scarcely requires an apology. If an apology is needed, it must be found in the various new cases dealing with this branch of the law which have been decided by the courts during the last three or four years. Among the most important of these is that of the *Metropolitan Coal Consumers' Co. v. Scrimgeour*, in which the Court of Appeal have held that payments made to a broker in consideration of services rendered in placing the shares of a company, do not amount to issuing those shares at a discount, and are not illegal payments—a decision which it is now proposed to supplement by statute. Attention should also be drawn to those cases, such as *Walter v. King*, *Petre v. Sutherland*, and *Sachs v. Spielmann*, which seem to show that of late years the courts have relaxed something of the stringency of the rule which forbade a broker to deal with his principal in any other capacity than that of agent. For where a principal fails to take up stock which his broker has bought on his behalf, it seems that it is permissible for the broker to take over the stock himself, provided that he has previously had a fair

valuation made, and then to charge his principal with any loss occasioned by his refusal to accept delivery. And, further, it appears that if a broker receives instructions to carry over his principal's stock, he will be allowed to carry over personally, provided that it is for the principal's interest that he should do so, and that the principal on receiving notice of the transaction does not repudiate it. In fact, the rule at present seems to be that a broker is on all occasions bound to use his best endeavours in his employer's interests, and that if, in doing so, he is occasionally compelled to abandon the position of an agent and take up that of a principal, he will not be held to have acted wrongfully.

In *Forget v. Ostigny* the distinction between gambling and legitimate speculation, enunciated by Lord Justice Lindley and affirmed by the Court of Appeal in the case of *Thacker v. Hardy*, has received further confirmation from the Judicial Committee of the Privy Council. In *Strachan v. Universal Stock Exchange*, the question of cover has received consideration; and the Court of Appeal have drawn a distinction between money or securities which have been lodged to abide the event of a wager, the property in which passes upon the decision of the wager, and money or securities which have been lodged to secure the due observance of a contract by the person who lodges them, and as to which appropriation or realization and appropriation, as the case may be, is or are necessary before any property in them passes to the deposittee.

The law relating to wagering contracts so rarely affects bargains in stocks and shares, that it is perhaps almost superfluous to point out here that the principle laid down in the famous case of *Read v. Anderson* is no longer good law, and that an agent who, since the Gaming Act of 1892, makes a gaming contract by his principal's instructions and pays it to save himself from loss, is not entitled to recover the

amount from his principal, although, if the bet has been won and the money has actually been paid into the agent's hands, the principal obtains a title to it which he may enforce by process of law.

It has been my endeavour to render the book useful not only to the legal profession, but also to members of the Stock Exchange and to the public generally. Consequently I have cited many of the cases at a length which would perhaps have been unnecessary had the book been intended only for those to whom the legal reports are readily accessible.

It is chiefly, too, with a view to the convenience of the public, who generally have little opportunity for acquiring an intimate acquaintance with the manner in which the business of the Stock Exchange is conducted, that the chapter which illustrates the usual method of "doing a bargain" has been inserted.

The rules of the Stock Exchange with short notes will be found in Appendix A. Reference has been made to them throughout the text, but it must not be forgotten that they are subject to constant revision at the hands of the Committee, and that the numbers are also liable to alteration.

I have to acknowledge my indebtedness to Mr. Francis's *Characters and Chronicles of the Stock Exchange* for much of the information contained in the introductory chapter. I also desire to acknowledge the great obligation which I am under to those members of the Stock Exchange who most kindly assisted me with the fourth chapter, and to Mr. R. Crémieu Javal, of the firm of Messrs. James Mason and Son, for a very careful revision of the glossary and other portions of the book which deal with the practice and management of the Stock Exchange; to Messrs. B. Perks and W. V. R. Fane, of the Inner Temple, for assistance with the references and index; and to Mr. F. M. Abrahams, of the Inner Temple, for

the many valuable suggestions which his extensive experience of this class of business has enabled him to give me, and to which the book will owe a large part of such practical value as it may be found to possess.

S. B.

THE TEMPLE,
July, 1897.

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TABLE OF ABBREVIATIONS.

A. & E.	Adolphus and Ellis' Reports.
B. & Ad.	Barnewall and Adolphus' Reports.
B. & Ald.	Barnewall and Alderson's Reports.
B. & C.	Barnewall and Cresswell's Reports.
Ball. & Beat.	Ball and Beatty's Reports, Chancery, Ireland.
Beav.	Beavan's Reports.
Bing.	Bingham's Reports.
Bing. N.C.	Bingham New Cases.
Bli. N.S.	Bligh's Reports, New Series.
Bos. & P.	Bosanquet and Puller's Reports.
Burr.	Burrow's Reports.
Camp.	Campbell's Reports.
C. & E.	Cababé and Ellis' Reports.
C. & K.	Carrington and Kirwan's Reports.
C. & P.	Carrington and Payne's Reports.
C. & F.	Clark and Finnelly's Reports.
C. B.	Common Bench Reports.
C.B. N.S.	Common Bench Reports, New Series.
Court Sess. Cas.	Court of Sessions Cases. (Scotch.)
De G. F. & J.	De Gex, Fisher, and Jones' Reports.
De G. & J.	De Gex and Jones' Reports.
De G. M. & G.	De Gex, Macnaghten, and Gordon's Reports.
De G. & S.	De Gex and Smale's Reports.
Dow. & Cl.	Dowling and Clark's House of Lords Cases.
East.	East's Reports, Kings Bench.
E. & B.	Ellis and Blackburn's Reports.
E. B. & E.	Ellis, Blackburn, and Ellis' Reports.
El. & El.	Ellis and Ellis' Reports.
Esp.	Espinasse's Reports.
Ex.	Exchequer Reports.
H. Bl.	Henry Blackstone's Reports.
Hem. & M.	Hemming and Miller's Reports.
Holt, N.P.R.	Holt's Nisi Prius Reports.
H.L.C.	House of Lords Cases.
H. & N.	Hurlstone and Norman's Reports.
Ir. Rep. C.L.	Irish Reports, Common Law.
J. & H.	Johnson and Hemming's Reports.
Jur. N.S.	The Jurist, New Series.
L.C. Eq.	White and Tudor's Leading Cases in Equity.
L.J. Bk.	Law Journal Reports, Bankruptcy.
L.J. Ch.	Law Journal Reports, Chancery.

L.J. C.P.	Law Journal Reports, Common Pleas.
L.J. Ex.	Law Journal Reports, Exchequer.
L.J. M.C.	Law Journal Reports, Magistrates' Cases.
L.J. P.C.	Law Journal Reports, Privy Council.
L.J. Q.B.	Law Journal Reports, Queen's Bench.
L.R. Ch.	Law Reports, Chancery Appeals.
L.R. C.P.	Law Reports, Common Pleas.
L.R. Eq.	Law Reports, Equity Cases.
L.R. Ex.	Law Reports, Exchequer.
L.R. H.L.	Law Reports, House of Lords.
L.R. Ir.	Law Reports, Ireland.
L.R. P.C.	Law Reports, Privy Council.
App. Cas.	Law Reports, Appeal Cases.
[1893], A.C.	Law Reports for 1893, Appeal Cases.
Ch. D.	Law Reports, Chancery Division.
[1893], Ch.	Law Reports for 1893, Chancery Division.
Q.B.D.	Law Reports, Queen's Bench Division.
[1893], Q.B.	Law Reports for 1893, Queen's Bench Division.
Ex. D.	Law Reports, Exchequer Division.
L.T.	Law Times Reports.
Macq. H.L.	Macqueen's Scotch Appeal Cases.
Man. & G.	Manning and Granger's Reports.
M. & S.	Maule and Selwyn's Reports.
M. & W.	Meeson and Welsby's Reports.
Mer.	Merivale's Reports.
Moo. P.C.C.	Moore's Privy Council Cases.
Myl. & Cr.	Mylne and Craig's Reports.
Rail. Cas.	Railway Cases.
R.R.	Revised Reports.
Rose	Rose Reports, Bankruptcy.
Ry. & M.	Ryan and Moody's Reports.
Sim.	Simon's Reports.
Sim. & Stu.	Simon and Stuart's Reports.
Scott	Scott's Reports.
Stark	Starkie's Reports.
Taunt.	Taunton's Reports.
T. R.	Term Reports.
T.L.R.	Times Law Reports.
W.N.C.	Weekly Notes' Cases.
W.R.	Weekly Reporter.
Wend. New York Rep.	Wendell's New York Reports.
Ves.	Vesey's Reports.

THE LAW AND PRACTICE OF THE STOCK EXCHANGE.

CHAPTER I.

INTRODUCTORY.

Stocks, if not unknown in England up to the middle of the seventeenth century, were at any rate not so generally treated as articles of commerce as to make stock-broking a remunerative calling. But from a very early period of English history "brokerie" in contracts between English and foreign merchants had been a recognized and profitable undertaking, and it was not till those who plied this trade extended their operations to pawnbroking, that their proceedings engaged the attention of the Legislature. Of the merchants of England it has been said that, although originally they "were much favoured in our law, yet soon their number and cunning, and their crafty dealings, had so much increased, that it fell out that we had more need to make laws against them."¹ So, too, it was with the brokers. As early as the time of Edward I. it was found necessary to place some limit upon the numbers of those who were desirous of exercising this lucrative calling. The first attempt in this direction was made in 1285. In that year, a statute of 13 Edward I. recited that "divers persons do

¹ See *Colonial Bank v. Whinney*, 11 App. Cas., p. 442.

resort unto the city, some from parts beyond the sea, and others of this land, and do there seek shelter and refuge by reason of banishment out of their own country; and of these some do become brokers, hostellers, and innkeepers, within the city, for denizens and strangers, as freely as though they were good and lawful men of the franchise of the city; and some nothing do but run up and down through the streets, more by night than by day, and are well attired in clothing and array, and have their food of delicate meats and costly; neither do they use any craft or merchandise, nor have they lands or tenements whereof to live, nor any friend to find them;"¹ and that through such persons many evils had happened in the city, such as robberies and breaking of houses by night. The statute accordingly decreed that no one should act as a broker unless he had previously been admitted and sworn before the Mayor and Aldermen, and that any unauthorized person so acting after one month had elapsed from the date of the proclamation, should be imprisoned and be for ever inadmissible to the franchise.

These provisions, however, appear to have been insufficient to check the malpractices of the brokers for any length of time. Finding, no doubt, that the civil wars of the Houses of York and Lancaster, and the unsettled times which followed them, were not conducive to making contracts and exchanging money between English and foreign merchants, they forsook these, the legitimate objects of "brokerie," for pawnbroking and various forms of usury. The example was contagious. Many freemen of the city, being men of manual occupation and "handicraftsmen," left "their handy and manual occupations," and "set up a trade of buying and selling, and taking to pawn of all kind of worn apparel, whether it be old or little the worse for wearing." On account of their increasing numbers and the consequent keenness of competition, such persons could not afford to inquire too closely whether the articles brought to them were the pawnor's property or not. The result was that

¹ *Statuta Civitatis London*: "Statutes of the Realm," vol. i. p. 103.

thieves were much encouraged by finding the disposal of stolen property an easy matter, and larceny became a common offence in London and Westminster. With the object of remedying these evils, a statute of the year 1604¹ provided that owners of stolen property might recover their goods upon demand, and subjected pawnbrokers to heavy penalties if they refused to produce the goods when called upon to do so. The statute, however, was aimed only at those who were "friperers, and no brokers," and did not effect the business of those who acted in good faith.

In the time of James I. the excitements of the Stock Exchange, and the allurements of the stock-brokers, had not yet begun to trouble the English people. A national debt, the creation of the Venetians, was as yet unknown in England. Loans, indeed, to satisfy the necessities of State, had been raised by Henry VIII. and many others of the English Sovereigns; but as they never thought of repaying money which they had borrowed, and as those who were forced to lend, probably had not any expectation of seeing their property again, there was little opportunity for speculation. It was left to William III. to introduce the principle that it is the duty of a State to keep faith with its creditors, and thereby to open the door to those commercial movements which were ultimately to result in the creation of the Stock Exchange.

Towards the end of the seventeenth century financiers were beginning to realize that there was money to be made out of the negotiation of Government loans, and by dealings in tallies, Exchequer bills, and the stock and funds of the East India and other large corporations. Many persons, assuming the title of broker, were not slow to avail themselves of the opportunities thus afforded. It is to a time not much later than this, that Mr. Francis refers in his *Chronicles and Characters of the Stock Exchange*, when he says,² "At this time the broker had a walk upon the Royal

¹ 1 Jac. I., stat. 21: "Statutes of the Realm," vol. iv. p. 1038.

² Page 24.

Exchange devoted to the funds of the East India and other great corporations; and many of the terms now in vogue among the initiated, arose from their dealings with the stock of the East India Company. Jobbing in the great chartered corporations was thoroughly understood. Reports and rumours were as plentiful then as now. . . . If at the present day ¹ a banker condescends to raise a railway bubble 50 per cent., the broker of that period understood his craft sufficiently to cause a variation in the price of East India stock of 263 per cent."

Such practices as these were bringing the brokers into disrepute. Complaints were made that the Royal Exchange was being put to a use foreign to the intention of its founder. It was said that trade was being diverted from its legitimate channels, and that the jobbers, as they were called in contempt, should be driven from the spot which their presence was polluting. This outcry led to further legislation.

In 1696 the Legislature limited the amount chargeable for brokerage to a sum of two shillings and sixpence per hundred pounds, this limit being enforced by a penalty of £500, and a liability to be dealt with as a common extortioner.² A statute of the following year,³ after reciting that "divers brokers and stock-jobbers, or pretended brokers," had "unlawfully combined and confederated themselves together to raise or fall from time to time the value of such tallies, bank stock, and bank bills, as may be most convenient for their private interest and advantage," provided that no one should act as a broker of tallies, tickets payable at the receipt of the Exchequer, Bank of England notes or stock, or capital or stock of the East India Company or other company incorporated by Act of Parliament or letters patent, except he were admitted, licensed, and approved by the Court of the Lord Mayor and Alderman of the city. Every broker on admission was required to take the oaths of allegiance.

¹ About 1850.

² 8 & 9 Will. III. c. 20, s. 60: "Statutes of the Realm," vol. vii. p. 235.

³ 8 & 9 Will. III. c. 32: "Statutes of the Realm," vol. vii. p. 285.

and supremacy, and an oath properly to fulfil his duties as broker. And, further, he was required to enter into a bond with the corporation for the due performance of his office. If the broker made a contract contrary to the corporation's regulations and in violation of his bond, the contract apparently was not *ipso facto* void, and he was not prevented from taking legal proceedings to enforce it, but the remedy against him was an action for the penalty of the bond."¹ On admission the broker was to pay a fee not exceeding forty shillings; he was to carry with him, and produce at the making of every bargain, a silver medal engraved with his name and the King's arms; the rate of brokerage was limited to ten shillings per cent.;² and the broker was not allowed to deal on his own account.³ The

¹ *Kemble v. Atkins* (1816), Holt, N.P.R. 427.

² 10 Anne, c. 18, s. 134: "Statutes of the Realm," vol. ix. p. 621, limited the rate of brokerage on tallies, Exchequer bills, and tickets to two shillings and ninepence per hundred pounds.

³ 6 Anne, c. 68 (c. 16, Ruffhead), contained a similar provision. But these provisions appear only to have applied to those cases in which the broker was attempting to act in the dual capacity of broker and principal in the same transaction. For in *ex parte Dyster* (1816), 1 Mer. 155; 2 Rose, 249, it was held by Lord Eldon that a broker in the city of London could maintain an action on a contract, or sustain a proof for a debt, arising out of transactions entered into by him as a merchant, and entirely distinct from his employment as a broker, although such transactions were in contravention of the regulations under which he held his office of broker, and of the conditions of the bond which he had executed; but that he could not have maintained the action, or sustained the proof, if the contract or debt had arisen out of a transaction in which he had acted as principal and broker at the same time, that being contrary to the principles of the common law. "I think," said his Lordship (1 Mer. p. 174), "it was clearly the intention of all these provisions . . . founded upon a most obvious policy, to prevent the broker from trading on his own account. The object of them, however, is foreign to the present point, which depends entirely upon what is the consequence, in point of law, of a city broker so trading." And again, "If a broker of the city of London trades for himself, openly and in public, he does that which the policy of every legislative enactment meant to prohibit. If he mixes in a transaction, in which he is ostensibly the broker, but really a buyer or seller, this is a gross fraud; but this is a case not now before me. . . . But as to the question with the city of London, they

penalty for acting as a sworn broker without being admitted was a fine of £500 and three mornings in the pillory. The number of brokers was limited to one hundred, and their names and addresses were to be posted in the Royal Exchange and the Guildhall.

This Act had not the effect of checking jobbing transactions in the public and other funds which was fondly expected, and when it expired in 1707 it had become so far a dead letter that its termination passed unnoticed and there was no attempt to renew its provisions.

In 1698 the dealers in funds and shares, in consequence of the severity with which their proceedings had been animadverted upon, determined to remove their business quarters from the Royal Exchange. They selected Change Alley as a suitable meeting-place, and Jonathan's Coffee House became the forerunner of the Stock Exchange. The corporation, while not hesitating to join in the general outcry against the proceedings of the jobbers, was not prepared to dispense with their attendance at the Royal Exchange. It was feared that business would leave the Exchange; and, with the object of compelling the brokers' return, a clause was inserted in the bonds which they executed on their admission, binding them not to assemble in the Alley.¹ As in the case of other provisions passed for the better regulation of their business, the clause was persistently disregarded by the brokers, and Change Alley continued to be their general place of resort until the building of the present Stock Exchange.

In spite of the many complaints which their conduct and dealings drew from all sections of the public, the brokers remained a never-failing source of profit to the city, and

have not said, 'you shall not trade.' They have said only, 'If you trade we will dismiss you;' and this, I think, they have a right to do. Therefore he is prohibited *sub modo* only; but he has not done that which the law will consider as being incapable of being made the ground for supporting an action."

¹ For the form of the bond, see *Clarke v. Powell* (1833), 4 B. & Ad. 846; 2 L.J. K.B. 145.

afforded to the Legislature a constant means of readjusting the financial scales. As soon as some source from which the city drew a portion of its revenues began to fail, a statute compelled the brokers to make good the deficiency by increasing their admission and annual fees. In 1707 an Act of the sixth year of Queen Anne¹ deprived the city of the profits which they had enjoyed since the first year of James I. from the garbling of spices,² and in substitution therefore imposed upon the brokers a yearly tax of forty shillings in addition to an admission fee of the same amount. In 1817, when, in consequence of the construction of some of the London docks, there was a falling off in the profits of the office of Gauger,³ a statute of that year⁴ increased the broker's admission fee and annual payment to £5 each by way of compensation, and raised to £100 the penalty of £25 imposed by the statute of the sixth year of Anne for acting without a licence.⁵

During the eighteenth century the brokers were continually growing in power. The first foreign loan appears

¹ 6 Anne, c. 63 (c. 16, Ruffhead): "Statutes of the Realm," vol. viii. p. 816. In *Jansen v. Green* (1767), 4 Burr. 2103, it was held that a stock-broker came within the provisions of this statute. See too *Clarke v. Powell* (1833), 4 B. & Ad. 846; 2 L.J. K.B. 145.

² The garbler of spices is an officer of great antiquity in the city of London, who is empowered to enter any ship, warehouse, etc., to view and search drugs, etc., and to garble and cleanse them.—*Johnson's Dictionary*.

³ An excise officer appointed for the purpose of gauging the contents of vessels.—*Johnson's Dictionary*.

⁴ 57 Geo. III. c. 60 (Local and Personal Acts).

⁵ In *Scott v. Cousins* (1869), L.R. 4 C.P. 177; 38 L.J.C.P. 156; 20 L.T. 32; 17 W.R. 324, it was held that where the clerk of a company acted as broker in a transaction of purchase and sale without a licence, there being no one over him who had the necessary licence, he had incurred the penalty imposed by the statute, and it was questioned whether, if an unlicensed clerk acted in a particular transaction under the general control of a duly licensed broker, both the broker and the clerk would not incur the penalty. As to the evidence necessary to convict under the statute, see *Scott v. North* (1867), L.R. 2 C.P. 270; 15 L.T. 208. Until a comparatively recent date, it was the practice of important banking firms to have one or two of their clerks admitted to the Stock Exchange to transact the firm's Stock Exchange business. This is now prevented by the Stock Exchange regulations (see rule 29, Appendix A).

to have been brought out in Change Alley in 1706, and every subsequent loan was but a fresh opportunity for the brokers to acquire influence and wealth. A regular system of intelligence was kept up between this country and the Continent by some of the most wealthy frequenters of the Alley, and as it was a matter of pecuniary and individual interest, the information thus obtained came sooner to hand and was more reliable than any obtainable by the Government of the day. This information, with a variety of tricks and artifices, was used to raise or depress the various funds and securities in the interest of those who paid for it. Owing to the improvements that have taken place in our system of communication, such methods of finance can only be employed at present on a comparatively small scale. But when news had to be conveyed entirely by messenger, and information as to the result of an important public event might be in the possession of a single operator for days or even weeks before the news became public, it is easy to understand what opportunities were afforded for manipulation. "It is," said a writer of the eighteenth century, of the method of dealing practised in the Alley, "a complete system of knavery, founded in fraud, born of deceit, and nourished by trick, cheat, wheedle, forgeries, falsehoods, and all sorts of delusions; coning false news, whispering imaginary terrors, and preying upon those they have elevated or depressed." We know that the pamphleteers of the eighteenth century, political and otherwise, were not very regardful of accuracy; still, the above does not seem to have been altogether an exaggerated account of the usual course of business in the Alley.

In denouncing the stock-brokers of the last century, we should, however, remember that a very considerable amount of the gambling and grosser forms of speculation for which Change Alley provided a shelter and the brokers have borne the blame, was due, not so much to the stock-brokers as to the great bankers, the Members of Parliament, and other wealthy persons, who were not ashamed to profit by the methods of the Alley while things went well, and to make a scapegoat of the jobbers when they went ill.

It was a common thing for Members of Parliament to denounce the jobbers in unmeasured terms. "To me, my Lords," said Lord Chatham on one occasion, "whether they be insatiable jobbers of Change Alley, or the lofty Asiatic plunderers of Leadenhall Street, they are equally detestable." Yet the House of Commons itself was not entirely free from corruption. On one memorable occasion, when the question was raised whether a limit should be placed on the dividends distributed by the East India Company, a member named Charles Townshend, who was the holder of a considerable number of shares, is said to have cried up the Company until he was able to sell out at a large profit, and then to have cried the Company down in the interests of his friends. To secure peace in 1763, £80,000 was set apart for the purpose of obtaining votes, three-quarters of that sum being distributed among eighty members, of whom forty received £1000 a piece, and forty others £500. It is, therefore, clear that Change Alley was not entirely responsible for the financial corruption of the eighteenth century, although, no doubt, it was in a large measure responsible for the birth of that spirit of uncontrolled, and for a time uncontrollable, gambling and speculation which was the ruin of so many families.

Among other objectionable forms of speculation in vogue at this time was the system of taking insurances on the lives of persons of note. It was, of course, merely a bet on the duration of the life insured, and as these bargains were reported in the newspapers, invalids and their friends must at times have found some pleasant reading. The following is a specimen of what might be expected: "Lord — may be considered in great danger, as his life can only be insured in the Alley at 90 per cent." However, this form of gambling did not long survive the combined efforts of the more influential frequenters of Change Alley to put it down.¹

In 1733 another attempt was made by the aid of the Legislature to put a stop to the speculation which was sapping the

¹ See Francis's *Chronicles and Characters of the Stock Exchange*.

strength of the upper and middle classes. The author of this attempt was Sir John Barnard, who will probably always be better known as the originator of an abortive scheme to check commercial gambling than for his many benefactions to the city. The statute usually known as "Barnard's Act"¹ was passed with the object of preventing "the infamous practice of stock-jobbing." This statute rendered illegal all contracts for the payment of differences only, and contracts in the nature of options, and imposed penalties upon persons who entered into such contracts, and upon brokers who negotiated them. It further declared that actions could not be maintained for debts thus created, and that money actually paid in satisfaction of such debts should be recoverable. This seemed enough to put a stop to speculative business altogether, and Change Alley spoke its mind very freely upon Sir John Barnard's conduct. But as in the case of other attempted restrictions upon Stock Exchange methods of transacting business, a way was soon found out of the obnoxious Act, and speculation went on as merrily as ever. The Courts of Law led the way in limiting the operation of the Act by holding that it was meant to protect the English funds only, and that speculative bargains in the funds of foreign countries, in railway stocks and shares, and in all cases in which there was a *bonâ fide* intention to deliver, although the vendor was not at the time in actual possession of the securities, were as good as ever.² Naturally the jobbers were not slow to avail themselves of this solution of the difficulty.

This statute, which was originally passed for three years only, was made perpetual in 1736,³ and was not repealed till 1860,⁴ though by that time it had long fallen into disuse.

It is perhaps a little curious that, considering how many attempts were made to keep the transactions of the brokers within bounds, stocks and shares were not included in the list of commodities to which the various statutes, passed

¹ 7 Geo. II. c. 8.

² See pp. 169, 170, *post*.

³ 10 Geo. II. c. 8.

⁴ 23 Vict. c. 28.

between the fifty-first year of Henry III. and the twenty-seventh of Geo. III., and dealing with the offences of badgering, engrossing, forestalling, and regrating, applied.¹ But the reason, no doubt, was that these statutes were for the most part intended for the protection of the poor, and were therefore confined to the articles with which they were principally concerned.

On the 15th of July, 1773, it was announced in a newspaper of the day that on the previous day the brokers and other persons meeting at New Jonathan's Coffee House had come to a resolution that instead of that House being called "New Jonathan's," it should in future be known as the "Stock Exchange." Here, up to the end of the century, the business of the dealers was for the most part conducted, and any one was admissible on payment of sixpence.

There was also, at a somewhat later period, a certain amount of business in the public funds done by brokers and jobbers in the Rotunda of the Bank of England, which was set apart by the governor and directors for that purpose. But it is probable that this was in connection with small transactions by the public, and the immediate transfer of stocks in the books of the Bank; while the Stock Exchange Coffee House afforded a ready market for the operations of the bankers, merchants, and capitalists connected with the floating of the numerous loans raised at that period for the service of the State.²

In 1801, owing to the increasing volume of business arising from the issue of a variety of new loans and other undertakings, and to the consequent increase in the number of members, it was found that the existing premises did not afford sufficient accommodation for the purposes for which they were required. A number of members therefore combined to buy a site in and about Capel Court, upon which was erected the first portion of the building which was

¹ See these statutes collected, 7 & 8 Vict. c. 24.

² See minutes of the evidence given by Mr. F. Levien before the Royal Commission, on the London Stock Exchange, 1877: Parl. Papers, 1878.

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thenceforth to be known as the Stock Exchange. A capital of £20,000 was raised, which was divided into four hundred shares of £50 each. The first stone of the building was laid in May, 1801, and the premises were opened for the transaction of business in the following year, there being at that time a list of about five hundred members. In 1853 the building was again found to be inadequate to meet the requirements of its increased membership. It was pulled down and entirely rebuilt, and various additions have since been made to the structure.

Until the year 1822 business in the foreign funds continued to be carried on in the Royal Exchange. In that year, however, a foreign Stock Exchange was erected in connection with the building in Capel Court, and later the two buildings were amalgamated under the same management.

In 1870¹ the powers of supervision and control which the Corporation of London had hitherto exercised over brokers carrying on business in the City were greatly curtailed in consequence of the publicity which was given to unfounded charges during the investigation which preceded admission. The Court of Aldermen were in future restricted to taking the admission and yearly fees, and to striking a broker's name off the list in case of a conviction for felony or fraud, or on receipt of a certificate from a judge of one of the superior courts that the broker was no longer a fit person to be on the list. It was, however, now objected that, as the Court of Aldermen had no longer power to refuse admission to any one who applied, many persons obtained a fictitious credit from what had become an empty formality. By a statute of 1884,² therefore, the last remnants of the City's authority were swept away, and at the present time the only control over stock-brokers and jobbers in the city of London is that exercised by the Committee of the Stock Exchange over members of that body.

Such is a brief outline of the history of a body which, from a somewhat mean origin, has gradually grown in

¹ 33 & 34 Vict. c. 60.

² 47 Vict. c. 3.

wealth and influence until recognition by the State, conveyed by an act of incorporation, would, in the opinion of those best qualified to judge, be a disadvantage rather than a boon.

At the present time complaints are frequently made of the manner in which the business of the Stock Exchange is conducted. No doubt the ease with which transactions in stocks and shares may be carried out affords opportunities for excessive speculation. But the public are at least as much to blame for this state of things as are the brokers. And if the temptation to speculate in stocks and shares were removed, there would probably be a corresponding increase in the speculation which already extensively exists in such commodities as wheat and oil—a form of speculation which is undoubtedly more injurious to the community generally; in the first place, because there is no such efficient machinery for controlling the actions of dealers in these commodities as exists in the case of members of the Stock Exchange; and, secondly, because such speculation affects the interests of a far larger class than does speculation in Stock Exchange securities.

On the other hand, as Chief Baron Kelly pointed out in *Grissell v. Bristowe*,¹ the Stock Exchange “affords to the public the very great advantage of being enabled, by means of a stock-broker and a jobber, to buy or sell at any moment any quantity of stock or any number of any description of shares at the market price of the day, and concluding the transaction, at the latest, on settling-day; whereas, without such a practice, every one having a given amount of stock, English, foreign, or colonial, or of debentures or shares in railways or other joint stock companies, to buy or sell, must wait until a seller or buyer could be found to sell or buy the exact quantity of stock or shares which is to be parted with or acquired—a state of things which, in this country, where some hundreds of these purchases and sales are effected every day, would be found intolerable, and would speedily demand a remedy, than which no better could be devised than this practice, so long established, and which has never until now been called in question.”

¹ L.R. 4 C.P., at p. 53.

CHAPTER II.

GLOSSARY.

Account.—"The account" is the period of time between settlement and settlement, during which stocks and shares may be bought and sold without being respectively paid for or delivered. The length of the ordinary account varies from fourteen days to nineteen, while the Consols account is one month.

A/c.—An abbreviation for account.—*See* above.

Account day.—The official name for *Pay-day*.

Arbitrage.—The operation of buying in one market and selling in another at different prices, so as to obtain the advantage of the varying prices of the same stock at practically the same moment in the two different markets. For instance, supposing that Spanish Stock stands at 64 in Amsterdam and at $64\frac{1}{2}$ in London, A.'s agent in Amsterdam buys at 64 and telegraphs to A. in London, who immediately sells at $64\frac{1}{2}$, thus making a profit of $\frac{1}{2}$ per cent. The same operation when conducted in two different markets in the same country is called "shunting."

Backwardation or Back.—A sum of money paid to a person who has bought securities for the ensuing account, in consideration for his allowing delivery to be postponed until a subsequent account. This only becomes payable when there is a large "bear" or selling account open. Backwardation is the converse of "carry-over rate."

Balance Certificate.—*See* CERTIFICATE.

Bang.—"Banging the market" is the name given to the operation executed by a dealer when he offers stock or shares



for sale, without intending to sell, with the object of depressing the market, so that he may be able to buy at a cheaper rate.

Bear.—A speculator who contracts to sell stock or shares which he does not at the time possess, in the expectation that the price in the market will fall, and that he will be able to purchase for delivery at the lower rate. Bears were so called because they were supposed to drag the market down, while the bulls tossed it up.

Bearer Securities.—Securities all rights in connection with which are passed by mere delivery of the documents of title.

Bidding.—The process by which a jobber who is desirous of procuring stock or shares, instead of negotiating with an individual jobber, makes a public bid in the House for the purpose of obtaining what he requires. It is the converse of "offering," which consists in a public offer of stock or shares.

Bonus.—Cash or share payments on shares made by a company over and above dividends. These payments are usually made in order to avoid the appearance of very great fluctuations in the rate of dividend. Shares may be sold "ex" or "cum" bonus.

Boom.—A rapid and considerable rise in the price of a security. It is the converse of "slump."

Broker.—A person who for a sum of money called "commission" buys or sells, as agent for his employer, any of the securities dealt in on the Stock Exchange. He is the intermediary between the jobber and the public. The points of difference between a broker and a jobber are, that while the broker deals directly with the public, the jobber can only deal with the public through the mediation of the broker; that while the broker buys or sells *for* the public, the jobber buys *from* or sells *to* the public through the agency of the broker; that while the broker's remuneration is obtained from a commission on the percentage of the value of the stock or shares bought or sold, the jobber's profit is realized from the difference between the prices at which he respectfully buys and sells the same security—

the "turn of the market" as it is called. An **Outside Broker** is a person who deals in stocks and shares without being a member of the Stock Exchange. A member of the Stock Exchange is allowed only to deal either as a broker or as a jobber, while an outside broker combines the functions of broker and jobber, or perhaps it would be more correct to say that while acting as a jobber he yet deals directly with the public.

Bucket-shopkeeper.—A term applied to a dealer in stock and shares who is not a member of the Stock Exchange, and who does not carry on a *bonâ fide* business.

Bull.—The term used to denote a person who makes speculative purchases of securities in the expectation of, or to cause a rise in their market value, and with intention of selling as soon as the rise shall have occurred. It is the converse of "bear."

Buying-in.—The purchaser of securities is theoretically entitled to delivery of them on pay-day. In practice, however, this has been found to be unworkable, owing to the numerous formalities which a transfer necessitates. Accordingly, certain days of grace are allowed to the vendor in which to make delivery. If on the expiration of this extended period the purchaser has not received his security, he is at liberty to instruct the official brokers to make a fresh purchase and charge the person responsible for the delay with any increased expense to which he has been put in consequence. This is called "buying-in." The operation is conducted by the officials of the Buying-in and Selling-out Department. Buying-in is the converse of "selling out," which is the right of the vendor, where he has not received a ticket containing the name of the purchaser by a certain hour on ticket-day, to re-sell through the official brokers, and claim any extra cost incurred against the person in default.

Calls.—Claims for sums of money due at a specified date on stock or shares which are not fully paid-up.

Carrying-over—also called **Continuation.**—If at the date of the fortnightly settlement a client is not prepared, where he is a purchaser, to take delivery and pay for the securities

which he has directed his broker to buy, or, where he is a seller, to make delivery of the securities, the broker enters into an arrangement with the other party to the contract, by which, in consideration of a small payment, the latter agrees not to require or make delivery, as the case may be, until a subsequent account. The arrangement is effected by making two fresh contracts, the first of which closes the contract open for the current account, while the second opens a new contract for a similar amount of stock or shares for the ensuing account. For instance, A. has bought through his broker B. from C., a jobber, 1000 shares for delivery on the 14th of May. He wishes to postpone delivery till the 28th of May. B. on A.'s behalf enters into two more contracts with C. By the first of these C. purchases from A. 1000 of the shares in question for the 14th of May, to close the contract already open, and by the second he re-sells to A. another 1000 shares for the 28th of May. This is called "carrying-over" or "continuing." If one of the parties to the original contract is not willing to postpone completion, the continuation is effected with some one else, who, if the seller wishes for delay, makes delivery in his stead, receiving in return a similar amount of the same stock or shares at the following settlement; or, if it is the purchaser who does not wish to complete, "takes in" the securities for him, and holds them till the next account. In most cases of postponement of delivery the purchaser is obliged to pay a carrying-over rate, but if there is a large "bear" account open the seller may be obliged to pay the rate, which is then called a "backwardation." These rates vary according to the length and state of the account, the cheapness of money, and the market dealt in.¹

Carrying-over Rate or Contango.—A sum of money paid by the purchaser of stocks or shares for the indulgence of being allowed to defer payment for them to a subsequent settlement to that for which they were originally bought. The amount of the rate varies in proportion to the length of

¹ See also as to continuation, pp. 61-63, *post.*

the account, and according to the class of securities dealt in and the market rate of money at the time. It is the converse of "backwardation." Contangoing off the market is the term used when the money required to enable securities to be carried over is obtained either from a bank, or from some person who is not a member of the Stock Exchange or a party to the contract.

Cash Bargains.—Dealings which are not entered into for any settlement, but are obliged to be settled before twelve o'clock on the following day.

Certificate.—A document issued by a company under its seal as evidence that the person named therein is entitled to the shares standing in his name in the company's books. **Balance certificate.**—Where a shareholder is selling a portion only of his holding, for which he has a single certificate, the company, on receipt of the deed of transfer and the certificate, make out a certificate for the purchaser of the shares which he has bought, and a balance certificate for the vendor of the shares which he retains.¹

Certification.—The affixing by the secretary of a company, or of the Share and Loan Department of the Stock Exchange, of a memorandum to a deed of transfer stating that the vendor of shares or stock has lodged with the company, or the Share and Loan Department, the certificate relating to such shares or stock.²

Challenging.—The process by which one of the parties to a transaction informs the other whether he is a buyer or seller, and at what price.

Clean.—A term used only in connection with dealings in rupee paper. It signifies that the paper is bought free from outstanding dividends.

Clearing House.—A system borrowed from banking methods and adapted to the requirements of the Stock Exchange in order to lighten the pressure of business at the settlement. Instead of tickets passing from hand to hand, as they would do in the ordinary course, and frequently

¹ See also pp. 72, 164, 233-235, *post*.

² *Ibid*.

being endorsed with as many as twenty or thirty names, before reaching the actual vendor, the present system enables members of the "clearing," as to those securities which "clear," to avoid the unnecessary labour thus involved by handing into the Clearing House a list of the securities which they respectively take and deliver, when the clerks of the Clearing House trace through the various transactions, and subsequently inform the members from whom they are to take and to whom deliver, with the respective amounts.¹

Closing.—The closing by a broker of his client's account either with the client's consent or without such consent, if he is unable or refuses to pay a sum of money lawfully required by the broker on account of purchases or sales which have been made on the client's behalf.

Coming-out.—*See* SALE FOR THE COMING-OUT.

Commission.—A sum of money received by a broker as remuneration for buying or selling securities for a client. The amount of the commission varies from one-sixteenth to one-half per cent., according to the market and the security that is dealt in.

Contango.—*See* CARRY-OVER RATE.

Contango-day.—The first day of the bi-monthly settlement. It is the day on which all speculative and other transactions which are not intended to be completed during the current settlement are carried over to the following settlement.

Continuation.—*See* CARRY-OVER.

Contract Note.—A note of advice sent by a broker to his principal, recording business which has been transacted on his behalf.

Corner.—Cornering is a process by which, by means of keeping a large majority of the shares of a company in the hands of interested parties and creating a fictitious demand for them, persons dealing in the shares are prevented from obtaining sufficient to meet their requirements except at prices dictated by those who hold the control.²

¹ See further, pp. 70-72, *post*.

² See too p. 204, *post*.

Coupons.—Vouchers attached to securities, evidencing the *prima facie* title of the holder to be paid the dividends on such securities as they fall due.

Cover.—Security deposited by a principal with his broker in respect of the account open with such broker.

Cumulative Preference Shares.—Shares which carry with them the right, in case a dividend is not earned in any one year, to receive such dividend in any subsequent year when the same is earned.

Current Securities.—Securities for which there is a ready market, as the dealings in them are always extensive. **Non-current Securities** are those for which there is only a limited market, it being often impossible to buy or sell them for a very considerable time.

Cutting Losses.—When a speculator who has lost money by his transactions, instead of continuing to speculate, determines to bear his present loss and not to run further risk, he is said to “cut his losses.”

Dealer.—*See* JOBBER.

Debenture.—A charge over the floating assets of a company to secure the repayment with interest of money which has been lent to the company.

Defaulter.—A member of the Stock Exchange who, being unable to meet his liabilities, is “hammered,” and ceases to be a member. A defaulter may be re-admitted to the Stock Exchange upon complying with the conditions as to payment, etc., which are imposed by the rules.

Deferred Shares or Stock.—Shares or stock upon which the payment of dividends is deferred until certain other classes of shareholders have received a fixed rate of dividend.

Differences.—A term used to denote the balance due between broker and principal in respect of transactions when securities are not taken up or delivered, as the case may be.

Dividend.—A sum of money paid out of the profits of an undertaking to the holders of its stock or shares. **Dividend, Ex and Cum.**—When a dividend has lately been declared upon some security, the security is quoted and sold on the Stock Exchange either as “cum div” or “ex div.” If sold

cum dividend the purchaser takes the dividend, if ex dividend the seller keeps it.

Ex All.—It is usual for the purchaser's broker to insert on the ticket containing the purchaser's name, which he passes to the vendor's broker on ticket-day, the words "all rights to dividends and new stock are hereby claimed." When securities are sold "ex all" the vendor retains these rights.

Ex New.—By a rule of the Stock Exchange, when new shares are declared in right of old, the purchaser of the old shares is entitled to the new, provided that he claims them in writing within a reasonable time. After a certain time has elapsed from the date of the declaration the old shares are quoted "ex new," but even then it seems the purchaser is not disentitled from claiming them, at all events where the delay in claiming them has arisen from ignorance of the fact that they have been declared: *Stewart v. Lupton* (1874), 22 W.R. 855.

Founders' Shares.—The name given to a certain class of shares in a company which are fully paid and are set apart for the purpose of remunerating persons concerned in the foundation of the company, the payment of the dividends on such shares being deferred until all preferential claims have been discharged, and the ordinary shares have received a fixed rate of interest. The amount of the dividends receivable in respect of the founders' shares depends upon the provisions made upon the formation of the company.

Guaranteed Shares and Stock.—Shares or stock the payment of dividends on which is insured by Government or by some other undertaking.

Hammering.—The process by which a member of the Stock Exchange who is unable to meet his liabilities is publicly declared a defaulter. It is so called from the fact that before the announcement is publicly made in the "House" a hammer is used to attract the attention of the members present.

House.—The precincts of the Stock Exchange in which the jobbers carry on their business.

Jobber or Dealer.—The members of the Stock Exchange are divided into two classes—jobbers or dealers and brokers. While the broker deals with the public, acting as an intermediary between the latter and the jobbers, and purchasing or selling *for* the public, the jobbers are prevented by the regulations of the Stock Exchange from dealing directly with the public, but, through the brokers, they sell *to* or buy *from* the public. The jobber's profit is the result of the difference between the prices at which he buys and sells the same security, technically known as "the turn of the market," and not of a commission, as in the case of a broker.

Letters of Allotment.—Letters announcing, in reply to an application for shares in a company, that shares have been allotted to the applicant.

Letters of Regret.—Letters announcing that the directors of a company are unable to allot shares to an applicant.

Letters of Renunciation.—Letters by which the allottee or the vendor of shares renounces his right to an issue of new shares in favour of the purchaser or other person.

Making a Market.—The process of raising or keeping up the price of a class of stock or shares by making large purchases.

Making a Price.—When a broker receives instructions to deal for a client, he goes into the "market" in which the security he requires is dealt in, and asks some jobber at what price he is prepared to deal. The jobber, without knowing whether the broker is a seller or buyer, if willing to deal names a price, or rather two prices, one at which he is willing to sell, and a slightly lower one at which he is willing to buy. This is called "making a price."

Making up.—Before tickets, in the case of securities to bearer, and the Clearing House had come into existence, clerks used to meet and read their "take and deliver" books against one another, and, where securities passed between three or more parties, "make-up" their accounts; that is to say, if A. had sold to B., B. to C., and C to A., A. and B., finding that A. had to take from C., and that B. had to deliver

to C., would report to C., who would drop out of the transaction, and leave A. to make delivery to B., himself merely receiving or paying a difference. Since the institution of the Clearing-house system and the introduction of bearer tickets, making-up is practically obsolete in dealings which are confined to London. It is, however, still in use in dealings in the country, or between London and the country.

Making-up-day.—Now called **CONTANGO-DAY**.

Making-up Prices.—The prices fixed by the officials of the Stock Exchange for the settlement of open bargains.

Markets.—The floor of the "House" is by custom mapped out into a number of different areas, each of such areas being devoted to dealings in some particular class of securities. The dealers in any particular security congregate in the market devoted to it to transact business. The markets are named after the securities bought and sold in them, such as the Kaffir market, the English railway market, etc.

Marking Bargains.—Where securities quoted in the official list are dealt in, the broker is entitled to have the transaction publicly "marked" or recorded in the "House."

Name-day.—Now called *Ticket-day*.

Negotiation.—When a broker is instructed to buy or sell some non-current security, instead of going to a jobber and asking him to make a price in the ordinary way, he is generally obliged to inform the jobber whether he is a seller or purchaser, the amount of the order, and such further particulars as may be necessary to enable the jobber to protect himself against loss. This is called "negotiating" or "opening."

Non-current Securities.—See **CURRENT SECURITIES**.

Offering.—See **BIDDING**.

Official Assignee of the Stock Exchange.—A member of that body who is appointed by the Committee to wind up the business and administer the assets of any member who is unable to meet his liabilities and has become a defaulter. Two or more official assignees are appointed annually. [See Rules 174 *et seq.*]

Official Brokers.—The brokers nominated by the Committee of the Stock Exchange to effect the buying-in or selling-out of securities where that course is authorized by the rules.

Official List.—A list of the prices of securities officially recognized on the Stock Exchange. It is published at four o'clock every afternoon, and shows the opening and closing prices of the various securities and the business done in them between the hours of 11 a.m. and 3 p.m.

Official Quotation.—The quotation in the official list by the order of the Committee of the Stock Exchange of the scrip or bonds of a loan or the shares of a company, to obtain which certain prescribed formalities must have been complied with.

Omnium.—An “omnium stock” is one which can either (1) voluntarily, at any time or at certain fixed times, or (2) automatically, at the expiration of a certain period,

be divided into proportionate parts of two or more other stocks. For instance, £100 Manchester, Sheffield, etc., Railway (omnium) London Extension Stock may be divided into £50 1896 5 % Preference Stock, and £50 Ordinary Stock, on the date when any call becomes due and to the extent of such call; that is to say, if £50 were due upon a call, £25 might be put into each stock. When fully paid-up, the £100 will automatically become £50 of each stock.

One-Man Market.—A term applied to a form of dealing which generally consists in all available stock or shares being held by a group outside the Stock Exchange, who deal through a single jobber or firm to the exclusion of all other members of the Stock Exchange.

Opening.—*See* NEGOTIATION.

Options.—Are either single or double. The single option is either (1) a “call” or option to buy; or (2) a “put” or option to deliver. The call option is the right, upon payment of a sum of money, to demand delivery of some security at the price at which it stands at the time of the making of the bargain, at a specified future date.

A double option is where the sum paid is for the right

either to put or call the security at a future date. An option is generally declared at twelve o'clock on contango-day, unless it is a single-day option, when the time for exercising it expires at 2.45 on the following day, or at 12.45 if the following day is a Saturday.¹ The money payable for an option is paid to the jobber on the selling day in the same way as an ordinary difference on stock, and whether, of course, the option is exercised or not. The price of an option fluctuates according to the security dealt in, and the price of a double option is usually nearly double that of a single.

Ordinary Stock or Shares.—Stock or shares which receive the residue of the net profits after interest has been paid upon all debentures and preference shares, and such provision as may be thought advisable has been made for the reserve or sinking fund.

Par.—The par value of a security is the face value. For instance, the par value of a £10 share is £10.

Pay-day, or Account day, or Settling day is the last day of the settlement. It is the day on which all securities which have been bought and sold during the account and have not been “continued,” are paid for, and should in theory be delivered, though in practice it has been found necessary to allow certain days of grace.

Placing Shares.—When a company is about to be brought out, a broker is usually retained to transact the necessary business in connection with the Stock Exchange, such as obtaining a settlement. The broker is sometimes in a position to obtain persons to take the company's shares, and shares disposed of through his intervention are said to be “placed” by him. On any shares thus placed the broker receives a commission, varying according to the nature of the shares.²

Pool.—A transaction in which several persons combine to purchase a large number of shares. If there is a rise in

¹ See Rule 76 as to options in Consols and in foreign securities.

² See pp. 117–120, *post*.

price, the contributors divide the profits among them in proportion to their contributions to the undertaking.

Preference Shares and Stock.—Shares and stock which receive a fixed rate of dividend out of the profits earned by the company before there is any distribution to the ordinary shareholders.

Premium.—The additional price of share or stock above their par value. If a £5 share sells in the market for 5½, its par value being £5, the premium is 10s.

Quotation.—The prices at which dealings in stocks and shares take place.

Rigging the Market.—A process by which an artificial value is given to securities by means of dealings upon the market which are not genuine dealings on behalf of the public.¹

Rights.—Benefits created by a company in favour of its shareholders, *e.g.* the right of acquiring further shares on advantageous terms. Shares may be sold either “ex” or “cum rights.”

Runner.—A person who introduces business into a broker's office, on the terms that he shall receive an agreed share of the profits earned on all business thus introduced, and shall bear an agreed share of the losses. He is sometimes described as having “a seat in the broker's office.”²

Sale for the Coming-out.—A term used to describe dealings in the stock or shares of a company, such dealings not being effected for a special settlement, but for the time when the certificates shall be issued.

Scrip.—A short term for scrip certificates, which are the documents constituting the evidence of title to stocks or shares. In other words, they are provisional documents which are issued by a government, corporation, or company, and acknowledge the right of the holder to bonds, stocks, or shares when the same are issued.

Selling-out.—The sale through the official brokers of

¹ See too p. 204, *post*.

² See also p. 42, *post*.

securities for which the original purchaser's name has not been passed nor the stock delivered within the time allowed by the rules of the Stock Exchange. It is the converse of "buying-in."

Settlement.—The last three days of each "account," which are called respectively *contango-day*, *ticket day*, and *pay-day*, are devoted on the Stock Exchange to settling accounts and completing the purchases which have been made during the account. Mining shares, however, are carried over the day before the ordinary *contango-day*. **Special Settlement** is where, on the bringing-out of a company, the Committee of the Stock Exchange appoint a day upon which all bargains in its shares are to be completed, and thus give it an official recognition.

Shunting.—See *ARBITRAGE*.

Sinking Fund.—Money which is reserved and invested for the purpose of indemnifying holders of shares or stock in an undertaking, the duration of which is limited.

Slump.—A term used to express a sudden rapid fall in the value of a security. It is the converse of "boom."

Special Settlement.—See *SETTLEMENT*.

Split.—See *TICKET*.

Squeeze.—An operation by which, where there is a large "bear" commitment open in some security, and the bears are unable to deliver, the value of the security is forced up by compelling the bears to buy back.

Stag.—A person who, upon the issue of the prospectus of a company, applies for an allotment of shares, not with the intention of holding them as an investment, but in the hope that they will go to a premium, and that he may then make a profit by selling them.

Stock.—Funded capital stock is generally transferable in specified amounts, as distinguishable from shares which are usually indivisible. Shares when fully paid up are, under the Companies Acts, allowed to be consolidated into stock.

Syndicate.—A group of persons who combine to deal in a class or classes of stock or shares for their mutual advantage.

Taking in Shares.—When a speculator, for a rise, has bought more stock or shares than he can take up, he obtains some one who, for a stipulated payment, takes up, pays for, and holds a portion for him until a subsequent settlement.

Tape Prices.—The prices of stocks and shares recorded through the medium of the Exchange Telegraph Company by permission of the Committee of the Stock Exchange.

Tickets.—When securities are sold on the Stock Exchange they may pass through many hands before they reach the ultimate purchaser. And as the execution of a deed of transfer in each case would add enormously to the cost of transmission, the following system has been devised with the object of saving time and expense. All dealings in the case of intermediate parties are conducted by means of "tickets." The ticket is a document made out and issued by the broker of the purchaser, and employed generally in the case of bearer securities, and invariably in the case of registered securities. On the ticket is set out the amount of the stock or the number of shares, the consideration, and, in the case of registered securities, the name, address, and description of the transferee. The ticket also bears the name of the broker who will pay for the securities on delivery, and the name of the jobber to whom he gives it. The jobber endorses on the ticket the name of the person to whom he delivers it, and the name of subsequent holders are endorsed until it reaches the ultimate seller's broker, when the transfer is made out and the object of the ticket is accomplished. **Splits**—or split tickets—are an elaboration of the ticket system. If a jobber in the course of his dealings has sold 1000 shares to a single purchaser, but has bought them in two separate lots of 500, instead of the single ticket for 1000 shares which he receives, he makes out two smaller tickets for 500 each. These smaller tickets bear the same particulars as the larger one, with the exception, of course, that the number of shares and the consideration are less. The splitter must himself bear any increased expense caused by extra transfer fees and stamp duty, and to enable

the transferee's broker to make the necessary appointment, he is obliged to announce on the ticket, "split by —." ¹

Ticket-day or Name-day.—The second day of the settlement. It is the day on which the name of the ultimate purchaser of securities is passed to the original seller by means of a "ticket," in order that it may be inserted in the deed of transfer.

Turn of the Market.—The difference between the selling and buying prices of a security. When a jobber "makes a price" for a broker, he in fact names two prices, one at which he is willing to sell, and a slightly lower price at which he is willing to buy, the difference between these two prices, or "the turn of the market," constitutes the jobber's profit. For instance, if the deal is in Brighton A Stock, and the jobber offers to buy at $148\frac{1}{4}$ [£148 5s.] and to sell at $148\frac{1}{2}$ [£148 10s.], the difference of five shillings between the two prices is the "turn of the market."

Underwriting.—A method of guaranteeing the taking-up of the shares in a new company. Persons are procured who, for a consideration, agree to subscribe for a stipulated number of shares if the public fail to do so. The consideration takes the form of a payment on each share underwritten, but the underwriter receives the total amount of the consideration, whether he takes up all, or a part, or none of the shares underwritten.²

Vendors' Shares.—Shares in a company which are allotted, as fully paid up and in lieu of cash, to the person or persons who have sold to the company the property which it is formed to manage, as consideration, or part consideration, for the property.

¹ See also as to tickets and splits, pp. 67-70 *post*

² See pp. 118-120, *post*.

CHAPTER III.

THE STOCK EXCHANGE AND ITS MANAGEMENT.

1. General description—2. Board of Managers—3. Committee for General Purposes—4. Members—5. Admission, etc.—6. Clerks—7. Partnership—8. Insolvency, etc.

THE London Stock Exchange¹ is a large block of buildings to the east of the Bank of England, bounded on its various sides by Bartholomew's Lane, Throgmorton Street, Threadneedle Street, and Old Broad Street. A building was erected on the present site in 1801–1802, a capital of £20,000, divided into 400 shares of £50 each, being collected for the purpose. In 1853 the building then in existence was found to be too small for the accommodation of its members. It was accordingly pulled down, and in its place a new building was erected, to which various additions have since been made.

The House. The chief feature of the interior of the Stock Exchange is the great hall, familiarly known as the "House," in which the members meet together to transact business. This hall is octagonal in shape, and is surmounted by a dome, the diameter of which is over seventy feet. The sides of the hall are faced with Pavonezza marble, owing to the peculiar blue markings of which the hall has been nicknamed

¹ Many of the more important provincial towns, such as Liverpool, Glasgow, Leeds, and Bristol, now possess Stock Exchanges of their own. But as their customs and regulations are very similar to those of the London Stock Exchange, they do not require separate treatment.

"Gorgonzola Hall," from a supposed resemblance to the cheese of that name. The floor of the hall is apportioned to various groups of jobbers, who, dealing in some particular class of security, constitute the so-called "markets" of the House, such as the foreign stock market, the mining market, etc. The building also contains settlement rooms, committee rooms, managers' rooms, and reading-rooms.

In 1876 a new deed of settlement was drawn up, by which the four hundred shares, the liability on which was unlimited, were subdivided into four thousand, and no one was in future permitted to hold more than ten. It was also provided that no call might be made of more than five pounds per share in the course of a single year. At the time of the Royal Commission, in 1877, £54 had been paid up upon each of the subdivided shares, and their market value was then £160. The average rate of dividend, which had been distributed during the previous seventy-five years, had been something over 20 per cent.¹

The objects with which the London Stock Exchange was originally founded were the provision of a ready market for the purchase and sale of the securities issued by governments, corporations, and public companies, and the enforcement of fair dealing among members.

The Stock Exchange as a body consists of two classes of persons: Shareholders and members.

- (i.) The shareholders or proprietors; and
- (ii.) The members or subscribers.

The shareholders are not of necessity members, nor are the members necessarily shareholders. Apart from membership, the shareholders have not even the right of entry into the Stock Exchange. The deed of settlement of 1876 proposed to ultimately merge the shareholders in the members by providing that in future any one, on becoming a proprietor of any shares by inheritance, should, if not a member, be obliged to sell them within twelve months.

¹ See the evidence given before the Royal Commission on the London Stock Exchange, 1877: Parl. Papers, 1878.

The Stock Exchange is under the government of two distinct bodies:

- (i.) The Board of Managers.
- (ii.) The Committee for General Purposes.

THE BOARD OF MANAGERS.

The Board of Managers consists of nine persons who, as representatives of the shareholders, have the control of the structural and financial arrangements of the Stock Exchange. Three of their number retire every five years, the election of persons to fill their places being in the hands of the shareholders, who have one vote for every share. The Managers appoint all the officials of the Stock Exchange, except the Secretary to the Committee for General Purposes and the official assignees. They also fix and alter the admission fees and the annual subscriptions payable by members and their clerks.

THE COMMITTEE FOR GENERAL PURPOSES.

Election.

On or about the 20th of March in each year a ballot of members of the Stock Exchange is taken for the purpose of electing thirty members to form the Committee for General Purposes. Notice of the date of the election, and of the names of the candidates, their proposers and seconders, is posted in the Stock Exchange some days previous to the day of the election.¹ Any one who, for five years immediately preceding the election, has been without interruption a member of the Stock Exchange, is eligible to a seat on the Committee, and loss of membership *ipso facto* vacates a seat.² Casual vacancies are filled by ballot after public notice of the election has been previously given, and members thus elected hold office only during the unexpired portion of the year for which their predecessors in office were elected.³ The members of the Committee elected on the 20th of March come into office on the 25th, and remain in office for one year.⁴

¹ Rule 1.

² Rule 2.

³ Rule 3.

⁴ Rule 1.

The ordinary meetings of the Committee are held on Mondays at one o'clock, but a special meeting may be held at any time, after one hour's notice has been posted in the Stock Exchange.¹ At the first ordinary meeting after the annual election, the Committee choose from among themselves a Chairman and Deputy-Chairman, and also a Secretary, who holds office during the Committee's pleasure.² Unless otherwise determined, a quorum of the Committee is constituted by seven members.³

The Committee exercise a general supervision and control over the conduct of members of the Stock Exchange and the transaction of business. For this purpose they have the power, under certain conditions and restrictions, to censure, suspend, or expel any member who refuses to comply with their decisions, is guilty of improper or disorderly conduct, or wilfully obstructs the business of the House.⁴ But the Committee's regulations cannot, of course, affect non-members, excepting where a non-member either voluntarily submits himself to the Committee's jurisdiction,⁵ or by commissioning his broker to make a purchase or sale on the Stock Exchange impliedly authorizes him to contract subject to the general and known usages of that market.⁶

The business of the Committee consists of the admission, re-admission, and re-election of members, the consideration of applications for special settling-days from new companies and other undertakings, the settlement of disputes between members, and, generally, the regulation of all matters affecting the Stock Exchange.

MEMBERS.

The members of the London Stock Exchange number at the present time about 3500, the average yearly rate of admission of new members from 1854 to 1895 having been slightly over sixty. Members are elected by ballot, and pay

¹ Rule 8.

² Rules 6 and 7.

³ Rule 4.

⁴ Rules 16 and 17.

⁵ Rule 55.

⁶ See cases collected in note 4, p. 88, *post*.

an entrance fee and an annual subscription for the use of the Stock Exchange premises, such payments constituting the rent receivable by the proprietors.¹ Any member wishing to resign his membership is obliged to forward to the Secretary a letter tendering his resignation, and a copy of such letter is posted in the Stock Exchange for at least four weeks before the matter is entertained by the Committee.² Membership may also be lost by expulsion,³ by being publicly declared a defaulter, or by becoming bankrupt or being proved to be insolvent, although not a defaulter on the Stock Exchange.⁴

Upon his admission to the Stock Exchange every member expressly binds himself duly to observe the rules and regulations that are, or thereafter may be, for the time being, in force;⁵ and as a man's power to bind himself by contract is unlimited, provided that he be *sui juris*, that there is no undue influence or fraud, and that the contract is not contrary to public policy, there can be little doubt that the courts would give effect to these rules and regulations if it became necessary to invoke their assistance, and that they would refuse to interfere were an appeal to be made to them by a

¹ The fees payable by members and their clerks are subject to constant revision by the Board of Managers. At the present time (1897) the fees payable are as follows:—

	£	s.	d.
Member, subscription	31	10	0
„ entrance fee	525	0	0
„ „ (when he has served 4 years as a clerk, R. 22)	157	10	0
Clerk, authorized, subscription	31	10	0
„ „ additional	18	18	0
„ „ entrance fee... ..	52	10	0
„ „ additional	42	0	0
„ unauthorized, subscription	12	12	0
„ „ entrance fee	10	10	0
Seat in House	31	10	0
„ settling room	5	5	0
Frame box	1	1	0
Drawer in House	1	1	0
„ „	2	2	0
Locker in cloak-room	1	1	0

² Rule 34.

³ Rule 16.

⁴ Rule 151.

⁵ See *Westropp v. Solomon*, p. 106, *post*, as to the effect of resolutions of the Committee passed after the date of the contract.

member with the object of ousting the jurisdiction of the Committee.¹ Want of reasonableness could not be successfully pleaded by a member in the case either of a printed rule or of an unwritten custom, since in the first case he has expressly agreed to be bound by the rule, and, in the second, he is a member of the body which introduced the custom.

Every member of the Stock Exchange is regarded by the Committee as a principal in all contracts into which he enters upon the Stock Exchange, and a broker is therefore responsible for the due performance of such contracts whether his principal outside the Stock Exchange duly performs his part of the contract or not.² This is clearly a just and reasonable rule, for the member who deals with a non-member is evidently in a better position to ascertain the latter's credit than is the member who never came into contact with him, and the difficulty of transacting business would be enormously increased if such a rule did not exist.

Members of the London Stock Exchange are divided into two classes—brokers, and dealers or jobbers.³ Originally there was but a single class of persons who acted as professional agents in the purchase and sale of stocks and shares. These persons were properly called stock-brokers, and the name "jobbers" appears to have been applied to them as a term of contempt.⁴ It is not clear how the present division arose, but possibly it is due to the rule of law which forbade a broker to deal as principal with his employer.⁵

¹ *Robertson v. Heffer* (1893), 9 T.L.R. 622; *Beltin v. Hatch* (1888), 109 New York Rep., 593.

² Rule 53.

³ For the distinction between the functions of the two classes, see p. 36, *infra*. This division of members is peculiar to the London Stock Exchange; the New York Stock Exchange, the English provincial exchanges, and the Continental bourses having a single class of members only. It was stated in evidence before the Royal Commission of 1877 that the want of the dual system necessitated the sending of many Continental and provincial orders to London for execution.

⁴ Sir John Barnard's Act spoke of the "infamous practice of stock-jobbing." See also Pitt's reference to the jobbers, p. 9, *ante*.

⁵ *Robinson v. Mollett* (1875), L.R. 7 H.L. 802; L.J. C.P. 362; 33 L.T. 544; *Brookman v. Rothschild* (1829), 3 Sim. 153; 5 Bli. N.S. 165.

Adver-
tising by
members.

Members of the Stock Exchange are not permitted to advertise, nor to send circulars to persons other than their principals. While a member is not permitted to act in the double capacity of broker and jobber at one and the same time,¹ there is no hard and fast line drawn between the two classes, and, apart from the etiquette of the Stock Exchange, there is nothing to prevent a member from acting as a broker one month, and as a jobber the next. In practice, however, a change is rarely made.

The distinctions between the functions of the broker and the jobber are as follows:—

Brokers.

The broker deals in any description of security as the agent of any member of the public who desires to employ him,² buying or selling on behalf of his employer, for a commission which varies according to the security dealt in, and is calculated upon the market price.³ The principles of law forbid him to buy from or sell to the person employing him, on the ground that if he were to do so there would be a danger that his personal interest might clash with that of his employer.⁴ However, the courts seem latterly to have somewhat relaxed the stringency of this rule.⁵ By the etiquette of the Stock Exchange, the broker acts merely as the instrument for bringing together the public and the jobbers.

See too Story on Agency: "In this connection, also, it seems proper to state another rule in regard to the duties of agents which is of general application, and that is, that in matters touching the agency, agents cannot act so as to bind their principals where they have an adverse interest in themselves. This rule is founded on the plain and obvious consideration that the principal bargains in the employment for the exercise of the disinterested skill, diligence, and zeal of the agent for his own benefit."

¹ Rule 43.

² A member of the Stock Exchange, however, is not permitted to transact business for a principal who, to his knowledge, is in default to another member, unless such person has made a satisfactory arrangement with his creditors: Rule 167.

³ See Course of Business, p. 55.

⁴ See note 5, p. 35, *ante*.

⁵ See *Walter v. King*, the *Times*, March 10, 1897, and p. 102, *post*.

The dealer, or jobber, as he is more generally called, ^{Jobbers.} deals in one of the groups of securities which, when habitually dealt in by a number of jobbers who frequent a particular part of the House for the purpose, are known on the Stock Exchange as "markets." A jobber may, and frequently does, change from one market to another; but he cannot deal in more than a single market at any one time, and his authorized clerk is not permitted to transact business in any securities other than those in which his employer is for the time dealing.¹ But in case of a firm of jobbers each member of the firm may deal in a separate market. In a professional capacity, the jobber never comes into contact with the public, but always acts through a broker. His remuneration consists of the difference in the prices at which he respectively buys and sells the same security, or, as it is called, "the turn of the market."

The existence of the jobbers has sometimes been objected to on the ground that their earnings constitute an enormous yearly tax upon the investing public, which might be avoided if the brokers were permitted to deal with one another. It was, however, stated in evidence before the Royal Commission on the Stock Exchange in 1877, that for want of such a system in the provinces and on the Continent, orders are frequently sent from the provincial exchanges and Continental bourses for execution in London. The Commissioners unanimously approved of the system so far as current securities were concerned, though they considered that in dealings in non-current securities the place of the jobbers might with advantage be supplied by a register, in which intending vendors and purchasers could enter particulars of their requirements. There is this to be said in favour of the present system, that if the turn of the market were saved to the public by the abolition of the jobbers, investors would certainly be obliged to pay a very much heavier commission to their brokers for the extra labour that would then be involved in obtaining buyers and sellers, while at the

¹ Rule 44.

same time the practical certainty which at present exists at ordinary times of being able to buy or sell the majority of stocks and shares at any moment, would probably be greatly diminished.

ADMISSION—RE-ELECTION—RE-ADMISSION.¹

At the time of the annual election on the Stock Exchange, any member who wishes to offer an objection to the admission, re-election, or re-admission of any applicant or of any other member, is required to communicate the grounds of his objection to the Committee by letter previously to the ballot or re-election.² If any application for admission, re-election, or re-admission is rejected, the applicant cannot be again balloted for, for a period of one year. Persons who are declared defaulters within four years of admission, or defaulters who are rejected upon two ballots, can only be re-admitted by a majority of three-fourths of the Committee at a meeting specially summoned, and consisting of not less than twelve members.³

Admission. On the first Monday in March in every year the Committee proceed to admit new members at fees fixed by the Board of Managers.⁴ Any one is eligible as a member who is twenty-one years of age, is not engaged in any other business,⁵ and, if a foreigner, has been naturalized for a period of not less than two years, and has been a resident in the country for not less than seven.⁶ If an applicant has been insolvent or has compounded with his creditors, he is ineligible until he has paid twenty shillings in the pound, and any one who has been more than once insolvent is permanently ineligible.⁷ If the applicant is a clerk of four years' standing who has not, previously to his employment on the Stock Exchange, been engaged in any other business,

¹ See, generally, Rules 20 to 38, and Appendix A., pp. 251-258.

² Rule 31.

³ Rule 32.

⁴ Rule 21.

⁵ Rules 29 and 44, and p. 256.

⁶ Rule 23.

⁷ Rule 30.

he is required to be recommended by two members of not less than four years' standing, who will each engage, in the event of his becoming a defaulter within four years from the date of his admission, to pay to his creditors the sum of £300, for which they are not indemnified. In all other cases there must be three sureties to the amount of £500 each.¹ Every election is by ballot, and eight days previous to the ballot, a notice of each application is posted in the Stock Exchange, containing the names of the recommenders, and stating that they are not, and do not expect to be, indemnified.² An applicant may be recommended by a firm, but not by,

- i. Two members of the same firm;
- ii. A member who is an authorized or unauthorized clerk;
- iii. A member whose authorized clerk the applicant is;
- iv. A member whose sureties are still liable;³

and no member may be surety for more than three new members at the same time.⁴

A former member who has discontinued his subscription for two years will be considered a new applicant, and will be obliged to apply for admission in the usual way.⁵

A member is elected for a period of one year only, and every member who is desirous of being elected for the ensuing year must, on or before the 15th of February, address to the Secretary a letter in the form specified by the rules.⁶ Re-election, in the majority of cases, is purely a matter of form, as the Committee does not make an investigation into the conduct of those who have been members up to the time of their application for re-election, and it is but rarely that an objection is taken to a re-election. Any former member, who, without having resigned or become a defaulter, bankrupt, or insolvent, has discontinued his subscription for one year, is obliged to be recommended for re-election by two members, but without security.⁷ Re-elected members do not pay another admission fee.

¹ Rule 22.

² Rule 24.

³ Rule 27.

⁴ Rule 22.

⁵ Rule 33.

⁶ Rule 20, and p. 257, *post*.

⁷ Rule 33.

Re-admission.

Where a former member has ceased to be a member owing to default, bankruptcy, or insolvency, he may be re-admitted, subject to the following restrictions. If he has compounded with his creditors and has subsequently been declared a defaulter, he cannot be re-admitted until the expiration of six months from the time when he was so declared.¹ If a member who subsequently becomes a defaulter during the same account, has, by passing or detaining a ticket for stock or shares, caused a loss to be incurred or increased at a time when, in the opinion of the Committee, he knew that he was insolvent, he is ineligible for re-admission for at least one year from the date of such default.² No defaulter can be re-admitted who has hindered the official assignees in the execution of their duties,³ or has failed to pay from his own resources, apart from the guarantee of his sureties, at least one-third of any loss that may have been incurred through his transactions; or who, in the event of the debts being less than the amount which his sureties are called upon to pay, has not refunded to the sureties one-third of the amount paid by them.⁴ A notice of the application for re-admission shall, subject to the discretion of the Committee, be posted (without recommenders) in the Stock Exchange for twenty-one days, but this notice may be dispensed with in certain cases.⁵ The conduct and accounts of the applicant for re-admission are investigated by a sub-committee,⁶ who report to the Committee. The Committee, then, if they think fit, re-admit the defaulter, placing him in one of two classes, according as his failure was due to misfortune or to indiscretion, and a notice of the Committee's decision is posted in the Stock Exchange for thirty days.⁷ Where, however, a defaulter has *bonâ fide* discharged his liabilities in full, and the Committee have in consequence dispensed with the posting of the first notice, they may, instead of placing him in one of the above two classes, post his name as having paid twenty shillings in the pound.⁸

¹ Rule 163.

² Rule 165.

³ Rule 162.

⁴ Rule 164.

⁵ Rule 35.

⁶ Rule 171.

⁷ Rule 172.

⁸ Rule 35.

CLERKS.

A member of the Stock Exchange may become a clerk to another member, but must in that case sink his individuality as a member. To be admitted to the Stock Exchange, a clerk shall be seventeen years of age, shall be (except in respect of his age) eligible as a member, and shall obtain the permission of the Committee;¹ and no clerk may enter the Stock Exchange until his employer has received from the Secretary notice of his admission.² A clerk, whether he be a member or not, is not permitted to transact business on his own account or in his own name, and any member or authorized clerk who shall do a bargain with him, renders himself liable to expulsion.³ Every admitted clerk pays an admission fee and annual subscription.⁴ After four years' service as a clerk, membership is obtainable on considerably easier terms than if the applicant is without previous experience.⁵

Clerks are divided into two classes—authorized and unauthorized. A clerk cannot be authorized to deal on behalf of his employer until he is twenty years of age, and, unless he is a member, until he has been two years in the Stock Exchange; and an authorized clerk is not permitted to transact business as a jobber in any securities except those in which his employer is at the time dealing.⁶ A list of authorized clerks and their employers is posted in the Stock Exchange,⁷ and any one wishing to withdraw permission from a clerk to deal on his account, must give notice in writing to the Secretary, who will forthwith post such notice in the Stock Exchange.⁸ Every member of the Stock Exchange may employ one authorized and one unauthorized clerk.

Unauthorized clerks, though admitted, are in precisely the same position as ordinary office clerks, except that they have the right of entering the "House." Being unauthorized

¹ Rule 44.² Rule 45.³ Rules 50, 57.⁴ See Table of Fees, p. 34, *ante*. ⁵ Rule 22; and see Admission.⁶ Rule 44.⁷ Rule 48.⁸ Rule 47.

they cannot deal on behalf of their employers, nor, being clerks, can they deal on their own account or in their own name.

PARTNERSHIPS.

Formation. In each year, as soon as practicable after the admission of new members and the re-election or re-admission of former members, a list of partnerships for the ensuing year is made out by the Secretary and posted in the Stock Exchange. For this purpose any new partnership, or an alteration in any former one, is required to be communicated to the Committee, and, with the exception noticed below,¹ a partnership is held to be unaltered or undissolved until such communication has been made.² When once a partnership has been formed, the partners may not deal privately without each other's knowledge, and if any member of the Stock Exchange transacts business, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being intentionally concealed from the other member or members of the firm, both members shall be expelled from the Stock Exchange.³

With new members. A new member is not allowed to enter into partnership during the period of his sureties' liability, unless he has first obtained their consent and such consent has been communicated to the Committee.⁴

Between brokers and jobbers. The rules of the Stock Exchange prohibit the formation of partnerships between brokers and jobbers,⁵ as such a combination would obviously defeat the object of the distinction between the two classes. Neither is a member permitted to take into partnership a non-member;⁶ and where, as is not unusual on the Stock Exchange, a broker agrees with a member of the public, that, in consideration of the latter introducing clients to him and agreeing to bear a proportion of any losses incurred in connection with the transactions of a client thus introduced, the "runner," as he is called, shall have a share of the commission, it has been

¹ Page 43, *post*.

⁴ Rule 41.

² Rule 39.

⁵ Rule 43.

³ Rule 56.

⁶ Rule 41.

held by the Court of Appeal that the relation of partnership is not created, as the intention to become partners is absent.¹ "I agree," said Lord Justice Kay, "that this arrangement hardly comes up to a partnership, though it is very near it. The commission received in respect of any transaction might not be all clear profit; the expenses of the office establishment would have to be provided for; and therefore the contract with the defendant was not that he should share the profit whatever it might be. On the whole, I think it would be going too far to say that the contract was that the defendant should share in the profits and losses of the transactions."²

Members who constantly deal together in any particular stocks or shares and participate in the result, are responsible for each other's liabilities, not only in those particular securities in which they are jointly interested, but in any other description of securities in which either of them transact business, unless they send a written notice to the Secretary specifying the particular securities in which they deal on a joint account. No limited partnership of the above description is permitted between more than two members or firms, and such a partnership may carry on business in those markets only in which both members or firms are dealing.³

Limited partnerships.

The failure of a firm *ipso facto* dissolves a partnership, and if the members of the firm, upon re-admission, desire to renew the partnership, notice of their intention must be given to the Committee in the same manner as if a partnership had never existed.⁴

A question might possibly arise whether, in the absence of express agreement between the parties, partnerships on

Duration of partnership.

¹ *Sutton v. Grey* [1894], 1 Q.B. 285; 63 L.J. Q.B. 633; 69 L.T. 673; 42 W.R. 195. It may be, however, that as towards members of the public whom the runner has induced to enter into contracts with the firm which employs him, and who believed him to be a partner, the runner would be estopped from denying his liability. In *Sutton v. Grey* it was further held that such an agreement was a contract of indemnity and not a guaranty, and therefore need not be in writing under sec. 4 of the Statute of Frauds (29 Car. c. 3).

² *Sutton v. Grey* [1894], 1 Q.B., at p. 291.

³ Rule 42.

⁴ Rule 40.

the Stock Exchange are partnerships for an indefinite time and therefore dissoluble at will, or are for the definite period of one year, and therefore only dissoluble, in the absence of any of the causes of dissolution specified below, at the time of the general election of members in March. On the one hand, as members are only elected for one year it would at first sight seem that the duration of a partnership must be likewise limited to that period. On the other hand, Rule 39¹ states that no partnership will be considered as altered or dissolved until a communication has been made to the Committee. Perhaps, however, as the re-election of members is more a matter of form than of anything else, and the second part of Rule 39 appears to contemplate dissolution at any time, these partnerships would be held in law to be partnerships at will. If they are partnerships at will, then it follows as a necessary consequence that they are dissoluble at the wish of any partner. If, however, they are partnerships for a definite period they would be dissoluble on any of the grounds upon which partnerships of a similar character are usually dissolved.² But there is apparently nothing to prevent members of such partnerships from entering into express agreements with one another, limiting, or extending the duration of the partnership upon such terms as may be mutually agreed.

¹ The meaning of Rule 39 is rather ambiguous. If the second part of the first paragraph is to be read with the first, it would seem that an alteration or a dissolution of a partnership can only be made at the time of the general election. If it is to be read separately, an alteration or dissolution may occur at any time.

² Partnerships other than partnerships at will, may be dissolved upon any of the following grounds:—

- (a) The impossibility of continuing, in consequence of—
 - (i.) The hopeless state of the partnership business.
 - (ii.) Insanity.
 - (iii.) Misconduct.
- (b) The transfer of a partner's interest.
- (c) The occurrence of some event which renders the partnership illegal.
- (d) Death.
- (e) Bankruptcy. (Lindley on Partnership, 5th edit., p. 570.)

INSOLVENCY AND BANKRUPTCY.

Every year the Committee for General Purposes appoints ^{Official} two or more members of the Stock Exchange to act as official assignees. Their business is to wind up the transactions of any member who has become a defaulter, and to manage his estate in conformity with the rules and usages of the Stock Exchange.¹ Each official assignee is obliged to find security to the amount of £1000 from two or more fellow members,² and his remuneration is dependent upon a scale which varies in proportion to the value of the estate to be administered.³ It is the duty of the official assignees to keep a register of the estates of all defaulters, and periodically to lay before the Committee statements relative to the moneys which have passed through their hands.⁴

An insolvent member is not allowed to make a compromise with his creditors, and any member conniving at a private failure by accepting less than the full amount of his debt is liable to be called upon to refund any money or securities received from the insolvent if the latter is declared a defaulter within two years from the date of the compromise.⁵ A member who has, before the regular day for settlement, received or paid any difference or any consideration for a prospective advantage, is obliged, in case of the failure of the member from whom he received, or to whom he paid, such difference or consideration, either to refund the amount or to pay it over again, as the case may be, for the general benefit of the creditors.⁶ And any creditor receiving, under any circumstances, a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled, is obliged to refund such amount as is in excess of his due share.⁷

When a member of the Stock Exchange becomes unable to fulfil his Stock Exchange engagements, he is publicly declared a defaulter, and thereby ceases to be any longer

¹ Rule 174.² Rule 175.³ Rule 181.⁴ Rule 180.⁵ Rules 152, 153.⁶ Rule 154.⁷ Rule 155.

a member. The same result follows in the case of bankruptcy or proved insolvency.¹ The word "insolvency" as used in the rules implies an "inability to pay debts, in the ordinary commercial sense and in the ordinary course of business."² A default upon the Stock Exchange has an effect very different from that which a bankruptcy has at law. For "a defaulter obtains no discharge from his debts. All that happens is this: unless he pays 6s. 8d. in the pound, he is not admitted into the Stock Exchange again, and remains liable to actions by all his creditors."³ If he pays 6s. 8d. in the pound and is re-admitted, then the Stock Exchange Committee will not allow any member of the Stock Exchange to sue him without their permission. The object of this is to secure that his assets shall be fairly distributed, and as I understand it, every year a man who has been a defaulter is called upon to show whether he can pay any more, and if he can pay any more he does so till he liquidates the whole debt."⁴ But a bankrupt, after a period more or less prolonged, obtains a discharge from all liability upon paying a certain proportion of his debts.

Assets.

As soon as a member of the Stock Exchange is declared a defaulter, the official assignees step in and proceed to collect his assets.⁵ These they pay to the credit of their joint account at a bank, distributing them as soon as practicable in accordance with the rules relating to the administration of defaulters' estates.⁶ The assignees' first duty is to publicly fix the prices current in the market

¹ Rules 150, 151.

² *Lacey v. Hill, Crowley's Claim* (1874), L.R. 18 Eq. 182; 43 L.J. Ch. 551; 30 L.T. 484; 22 W.R. 586.

³ But see Rule 54.

⁴ L.R. 18 Eq., p. 191.

⁵ In *Tomkins v. Saffery* (1877), 3 App. Cas. 213; 47 L.J. Bk. 11; 37 L.T. 758; 26 W.R. 62, Lord Blackburn was of opinion that the word "assets" as used in Rule 176 included the whole of a defaulter's available property. But whether, in view of the decision of the Court of Appeal in *Ex parte Grant* (*infra*), it should not be confined to the fund created by the collection of differences arising out of Stock Exchange transactions, and owing to the defaulter at the time of his default, is perhaps questionable.

⁶ Rule 176.

immediately before the declaration, so that all members who have accounts open with the defaulter may close them at those prices, and claim from, or pay to, the assignees the differences arising from the transactions.¹ The fund thus formed is a purely artificial one, and where the member is at the same time adjudged a bankrupt, his trustee in bankruptcy has no claim to any part of the fund.² But where the assignee has obtained possession of a part of the general assets of the defaulter, the general creditors are thereby injured and the trustee in bankruptcy is entitled to claim the return of the part paid over.³ It is possible, too, that such a payment would in itself amount to an act of bankruptcy.⁴ The rules now permit non-members to participate in the distribution of defaulters' estates, provided that their claims are admitted by the creditors, or, in case of dispute, by the Committee. Persons whose claims have been thus admitted, may be represented at the meeting of creditors by any member whom they may select.⁵

Where the member who is in default, and whose accounts are consequently closed, is a broker, the practice of the Stock Exchange is, that the closing of the account as between the defaulting broker and the jobber does not affect a principal, who desires to complete the contract and is not in default to the defaulting broker. In that case the jobber is bound to complete the contract with the broker's principal, who may either personally take up the shares on paying the price to the jobber, or may transfer the account to

Right of principal on broker's default.

¹ Rule 177. The amount of the differences fixed by the official assignee as due by a defaulter to a Stock Exchange creditor is a "liquidated sum" within the meaning of sec. 6 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), and will support a bankruptcy petition by the creditor against the defaulter: *Ex parte Ward* (1882), 22 Ch. D. 132; 52 L.J. Ch. 73; 48 L.T. 332; 31 W.R. 112. See now the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6 (1) (b).

² *Ex parte Grant, in re Plumbly* (1880), 13 Ch. D. 667; 42 L.T. 387; 28 W.R. 755.

³ *Tomkins v. Saffery* (1877), 3 App. Cas. 213; 47 L.J. Bk. 11; 37 L.T. 758; 26 W.R. 62, affirming *ex parte Saffery, in re Cooke* (1876), 4 Ch. D. 555.

⁴ *Ibid.*

⁵ Rule 168.

another broker. It is the duty of the broker to advise his principal of this practice, and if he closes the account without doing so, he is unable to recover anything that may be owing to him from his principal upon such account, though the case might be otherwise, were the default due wholly or in part to the principal's conduct.¹ But where the principal has been advised of the practice, and has elected to have his account with the jobber closed, the broker is entitled to recover from him anything owing upon such account.²

Right of
broker on
principal's
bank-
ruptcy.

On the other hand, where the principal becomes bankrupt, a broker who has bought securities on the principal's account with his own money, is at liberty to immediately sell them, and claim against the principal's estate for the balance remaining due.³ And the broker is entitled to claim the balance thus due to him, although he is himself insolvent, and has been declared a defaulter on the Stock Exchange.⁴ It might, however, be that were the securities to rise in value between the time of sale and the ensuing settling-day the broker would be liable to a counter-claim for the amount thus lost to the principal's estate.⁵

Principal's
securities
in broker's
bank-
ruptcy.

Where a broker becomes bankrupt a question may arise whether securities deposited with him for safe custody or otherwise, will pass to his trustee in bankruptcy under the "order and disposition" clause of the Bankruptcy Act, 1883.⁶ In the *Colonial Bank v. Whinney*,⁷ railway shares were bought by a firm of stock-brokers with partnership money, and registered in the name of one of the partners

¹ *Duncan v. Hill* (1873), L.R. 8 Ex. 242; 42 L.J. Ex. 179; 29 L.T. 268; 21 W.R. 797.

² *Hartas v. Ribbons* (1889), 22 Q.B.D. 254; 58 L.J. Q.B. 187; 37 W.R. 278.

³ *Lacey v. Hill, Scrimgeour's Claim* (1873), L.R. 8 Ch. 921; 42 L.J. Ch. 657; 29 L.T. 281; 21 W.R. 857.

⁴ *Lacey v. Hill, Crowley's Claim* (1874), L.R. 18 Eq. 182; 43 L.J. Ch. 551; 30 L.T. 484; 22 W.R. 586.

⁵ *Lacey v. Hill, Scrimgeour's Claim, supra.*

⁶ 46 & 47 Vict. c. 52.

⁷ (1886), 11 App. Cas. 426; 56 L.J. Ch. 43; 55 L.T. 362; 34 W.R. 705.

only. The certificates, with a blank transfer, were deposited to secure the firm's overdraft, no notice of the deposit being given to the railway company. The certificates contained a note that in the event of sale or transmission, the certificate must be surrendered with the deed of transfer before the transfer could be registered. The House of Lords held that the shares were not in the bankrupt's disposition; in the first place, because the circumstances were such as to exclude any reputation of ownership, inasmuch as he had parted with the certificates, and, having regard to the note upon them, would not be able to register any transfer without producing them or accounting for their loss or destruction, or showing that they were wrongfully withheld; and in the second place, because the shares were things in action, and were therefore excluded, by the proviso which the section contains,¹ from the operation of the doctrine.

Again, in *Morris v. Cannan*² a holder of shares in a company sold them, and, on payment of the purchase-money, handed blank transfers to the purchaser. The purchaser subsequently resold some of the shares, but in the interval the original vendor had been adjudicated bankrupt, and the company refused to register. The omission to register in the first instance had arisen from press of business in the company, but an acknowledgment had, as was customary, been given to the vendor when intending to sell, that the company held the certificates of his shares. This acknowledgment had been handed to the purchaser, but no further notice of the sale had been given to the company. It was held that the shares were not in the vendor's reputed ownership at the time of the sale.

But these cases are perhaps not of very great importance to the principal who deposits securities with a broker, in view of the decisions in *Taylor v. Plumer*³ and *Knatchbull v. Hallett*⁴ that there is a fiduciary relation between broker

¹ Section 44, sub-s. iii.

² (1862), 4 De G. F. & J. 581; 31 L.J. Ch. 425; 6 L.T. 521; 10 W.R. 589.

³ (1815), 3 M. & S. 562.

⁴ (1880), 13 Ch. D. 696; 49 L.J. Ch. 415; 42 L.T. 421.

and principal which enables a principal to follow money or securities which he has placed in the hands of his broker. And, therefore, so long as the securities are in the hands of the trustee in bankruptcy or of any other person who merely holds in right of the broker, and not by title paramount, as in the case of a *bona fide* holder for value, the principal is entitled to recover them.

Settlement
of claims
by and
against de-
faulters'
estate.

The official assignees are not allowed to claim differences due to a defaulter's estate until such differences actually become payable,¹ and they may not admit a claim upon the estate arising out of transactions which are not officially recognized until all other claims have been paid in full, although all assets arising from such unrecognized transactions are to be forthwith collected and distributed among the creditors.²

The rules provide for an equitable distribution of the defaulter's assets, allocating, as far as possible, sums receivable from particular sources or funds to the payment of claims arising from similar or the same sources or funds.³ They also provide for the realization of securities;⁴ disallow payment of loans for which the lender has received no security, and differences which have been permitted to remain unpaid for more than two business days beyond the day on which they became due;⁵ and forbid a member to assign or pledge his claim upon a defaulter's estate to a non-member without the concurrence of the Committee.⁶

Defaulters who have in any way prejudiced the interests of their creditors are only eligible for re-admission to the Stock Exchange under restrictions which vary in proportion to the nature and extent of the offence committed,⁷ and no member is permitted to carry on business for the benefit of a defaulter without the Committee's sanction, or to deal with the defaulter on his own account before re-admission.⁸

¹ Rule 178.

² Rule 179.

³ Rules 156, 157.

⁴ Rule 158.

⁵ Rules 159, 160.

⁶ Rule 169.

⁷ See Re-admission, p. 40, *ante*, and Rules 162-165.

⁸ Rule 166.

CHAPTER IV.

THE COURSE OF BUSINESS ON THE STOCK EXCHANGE.

It is always difficult for one who is not a member of the Stock Exchange to appreciate accurately the manner in which the members of that body conduct their business, and to comprehend the various complicated details which are involved in a single transaction of purchase and sale. Accordingly, it will probably be beneficial to trace from commencement to completion the course of a transaction in a security in which the dealings are typical of a large proportion of the business which is carried on upon the Stock Exchange.

When securities are sold in that market it frequently happens that they pass through the hands of a number of persons before the original vendor and the ultimate purchaser are brought together by the circulation of a "ticket."¹ In the present instance, however, we will take a case in which there are seven parties :—

1. Adams
 2. Brown
- } sellers of £500 Brighton "A" stock each.
3. Jones, purchaser of £1000 Brighton "A" stock.
 4. Smith & Co., brokers to Adams.
 5. Thomas & Co., brokers to Brown.
 6. White & Co., brokers to Jones.
 7. Robinson & Co., dealers or jobbers.

¹ For an explanation of "ticket," see p. 28, *ante*, and for the form, p. 67, *post*. In the case of very speculative securities, a ticket is sometimes endorsed with as many as a hundred names between the time of leaving the purchaser's broker and the time of reaching the seller's.

Making the
bargain.

At 10 o'clock on June 1st, the three brokers receive instructions from their respective principals to buy or sell as the case may be. Immediately upon the official opening of the "House"¹ for business at 11 o'clock, Smith and Thomas proceed in turn to the English railway "market"² where this and kindred securities are dealt in. Here they find Robinson waiting to do business. Without telling him whether they wish to buy or sell, they ask him whether he will make a price in Brighton A. Robinson mentions a price to each, let us say 150 to 150½. The brokers, if not satisfied with the narrowness of the margin between the prices, then ask, "What will you make me in 500?"—meaning, "mention the prices at which you are willing to buy or sell." Robinson replies, let us suppose, "150¼–½"—meaning that he will buy at 150¼ (£150 5s.), or sell at 150½ (£150 10s.) per nominal £100 of stock.

The jobber need not necessarily make the same price to each of the brokers; he may vary it at his discretion within the nominal market price, which is invariably wider³ than that at which the jobber will deal. If either Smith or Thomas had been dissatisfied with the prices offered by Robinson, he might have passed on and tried to deal with some other jobber. If, instead of being a current⁴ security with a free market like Brighton A. stock, the deal had been in a non-current security, the brokers might, after having been told the nominal price,⁵ have been obliged to "open" to the jobber; that is to say, they would have told him whether they wished to buy or sell, and the amount in which they desired to deal. The jobber would then endeavour to "place" or buy the stock elsewhere at a price which would ensure a reasonable profit to himself. This

¹ For explanation of this term, see p. 21, *ante*.

² For explanation of this term, see p. 23, *ante*.

³ *I.e.* the "turn of the market" (see p. 29, *ante*) is larger than the 5s. or ½ difference between the two prices 150¼ and 150½.

⁴ For explanation, see p. 20, *ante*.

⁵ In case of a non-current security, the difference between the buying and selling prices may be as much as £2 or £3 per cent. or more.

course of dealing between broker and jobber is termed "negotiating."

Where the jobber has named a price without the amount of the security being stated, he cannot be compelled to buy or sell more than a limited amount of such security, the amount varying according to the description of stocks or shares in which the transaction is to be effected, and, in the case of shares, according to the actual market price of the shares at the time.¹

Supposing that Smith and Thomas both consider the price offered by Robinson satisfactory, they each in turn say, "I sell you 500 Brighton A at 150½," and the jobber answers, "I buy 500 at 150½." This concludes the contract. No written note passes between Robinson and Smith, or Thomas, though each party makes a memorandum of the transaction in a note-book, usually called the "jobbing book." Disputes arising out of this informal method of doing business are said to be almost unknown, and it must be admitted that in times of pressure it enables business to be conducted with a rapidity which would be impossible if a formal contract had to be entered into whenever stock or shares passed between broker and jobber.

Having now "done the bargain," Smith proceeds to "mark" it. He writes on a printed slip of paper, "Brighton A 150½," signs his name, and places it in the box kept for the purpose, ^{the} ^{Marking} bargain.

¹ An offer to buy or sell is binding within the following limits:—

- (a) £1000 stock, or scrip in the case of securities to bearer [Rules 80, 91, 113].
- (b) In the case of shares deliverable by deed of transfer :
 - (i.) 100 shares if the market value does not exceed £1.
 - (ii.) 50 shares if the market value exceeds £1, but does not exceed £15.
 - (iii.) 10 shares if the market value exceeds £15 [Rule 91].
- (c) In the case of shares to bearer, 10 shares [Rule 113].
- (d) French rentes, Fs. 750 [Rule 113].
- (e) United States bonds, \$5000 [Rule 113].
- (f) 100 United States shares [Rule 113].

whence the clerk of the House takes the paper and marks up the price on a blackboard in the House. The process of marking is partly for the information of the members of the House; but it also has the effect of enabling the broker to justify himself with his principal in case of dispute as to the price of a bargain, these marks being as a rule published in the daily papers. Thomas also comes to mark his bargain, but owing to the fact that the price at which he dealt is already marked, this becomes unnecessary.

The price must be marked promptly, for it would be obviously unfair that it should be done after there had been any considerable fluctuations. The rule, however, is not inflexible, and the clerks of the House may, with the concurrence of a member of the Committee, mark omitted bargains, if notified before one o'clock, in the order of their occurrence, upon a written application from the buyer and the seller, stating the amount of the bargain, and the time when and the price at which it was made. Bargains made between the hours of one and three may, under similar circumstances, be marked before three o'clock; but no bargain made before 11 o'clock or after 3 o'clock can be marked at all. Applications made in pursuance of this rule must be filed and brought before the Committee at their next meeting;¹ but the occasions on which the rule is called into operation are rare.

A marking may be objected to by any member of the House, on the ground that the price is not a current one, and it may then be struck out on obtaining the leave of the Chairman, Deputy-Chairman, or two members of the Committee.²

The sold
note.

Smith and Thomas now return to their offices and have their respective bargains entered in the "day-book." From the day-book the clerks then make out the contract note which is to be sent to the client. It is in the following form :—

¹ Rule 148.

² Rule 149.

2, Throgmorton Lane,
London, E.C., 1 June, 1896.

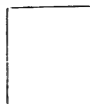
Form of
sold note.

Sold for Adams, Esq.
£500 London and Brighton Railway Deferred Stock.

(Subject to the Rules and Regulations
of the London Stock Exchange.)²

(Signed) Smith & Co.

For 15 June.



@	150 $\frac{1}{4}$	751	5
¹ Brokerage $\frac{1}{2}$ % and Contract Stamp 1s.)		3	16
		£747	9

The contract note thus made out is stamped and signed by the broker and despatched to the principal with a letter of advice.³

On the following morning the broker's clerk takes a copy of the jobbing book known as the "checking book," and meets the jobber's clerk in the checking room to check the memoranda of the bargain made by their respective principals. The broker's clerk says: "I sell you 500 Brighton A at 150 $\frac{1}{4}$;" the jobber's clerk answers: "I buy 500 Brighton A at 150 $\frac{1}{4}$." Each initials his book and the bargain is checked. If, however, they find that the bargains do not tally, they refer the matter to their principals. The principals meet, and if they cannot agree they submit the matter to two other members for arbitration. This course is the most convenient, as the chief requirement in these cases is that the matter shall be adjusted with speed, so that loss from a continued rise or fall may be avoided. But if arbi-

Checking
the
bargain.

¹ In the case of shares the rate of brokerage varies according to the price of the shares.

² This note is inserted for the purpose of drawing the clients' attention to the Stock Exchange regulations in order that they may become a part of the contract as between the broker and his client.

³ As to the penalties incurred by the broker if a note is not sent or is sent unstamped, see p. 120, *post*.

trators cannot be found, or if, when found, they cannot agree upon their award, the Committee will entertain and decide the matter.¹

Broker's
checking-
book.

The entry in Smith's & Co.'s checking book will be as follows:—

BOUGHT SIDE.				SOLD SIDE.			
JUNE 1st, 1896.				JUNE 1st, 1896.			
Security.	Amount.	Jobber's Name.	Price.	Security.	Amount.	Jobber's Name.	Price.
				Brighton A	500	Robinson & Co.	150½

Ledgers.

Smith & Co. also make the two following entries in the jobber's and principal's ledgers:—

JOBBER'S LEDGER.

DR.		ROBINSON (JOBBER).						CR.	
			£	s.	d.				
1896 June 1	500 Brighton A	150½	751	5	0				

PRINCIPAL'S LEDGER.

Dr.																
		Amount.	Security.	Price.				Commission.			Stamps.			Total.		
					£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1896 June 1	500	Brighton A	150½	751	5	0	3	15	0	—	1	0	747	9	0	

¹ Rule 65.

The entries of the same transaction in the jobber's books will be as follows:—

JOBGING BOOK AND CHECKING BOOK.

Jobber's checking-book.

DR.

1896 June 1	Brighton A	500	Smith & Co.	150 $\frac{1}{4}$	
----------------	------------	-----	-------------	-------------------	--

"JOURNAL."

DR.

BRIGHTON "A."

CR.

Ledgers.

				£	s.	d.					£	s.	d.
1896 June 1	500	Smith & Co.	150 $\frac{1}{4}$	751	5	0	1896 June 1	1000	White & Co.	150 $\frac{1}{2}$	1505	0	0
" 1	500	Thomas & Co.	150 $\frac{1}{4}$	751	5	0							

BROKER'S LEDGER.

SMITH & Co.

CR.

					£	s.	d.
1896 June 1	500	Brighton A	150 $\frac{1}{4}$	751	5	0	

The purchaser's broker, White, now goes into the market to execute his order for £1000 Brighton "A" stock, and also comes to Robinson, who names the same price—150 $\frac{1}{4}$ — $\frac{1}{2}$. White buys £1000 at 150 $\frac{1}{2}$ per cent., and sends the following bought note to Jones:—

The bought note.

Form of
bought
note.

21, Throgmorton Gardens,
London, E.C., 1 June, 1896.

(Subject to the Rules and Regulations
of the London Stock Exchange.)

Bought for Jones, Esq.
£1000 London and Brighton Deferred Stock.

@	150½	1505	0	0
Stamp ¹ and Fee ²		7	17	6
Brokerage ½ %		7	10	6
and				
Contract Stamp			1	0
		£ 1520	9	0

(Signed) White & Co.

For 15 June.

The market might, of course, have fluctuated by the time White came to buy, and Robinson would then have named a different price. But as he makes the same price, and White turns out to be a purchaser, Robinson's liability practically ceases; he has earned a profit of £2 10s.—that is to say, five shillings or the turn of the market on each of the nominal £100 of stock—and becomes merely a channel for the delivery of the stock when the time for settlement arrives. Probably, however, very few of the bargains made during an account work out in quite so simple and satisfactory a manner. Supposing that White had bought £1500 Brighton A instead of £1000, it is clear that Robinson would have sold £500 more than he had bought. In this case if no one came to Robinson to sell another £500 before the settlement, and he was accordingly short of the stock which he had contracted to deliver to White, he would be obliged to buy the extra £500 back, or borrow it at interest until the following account.

¹ The stamps are as follows: where the value of the security

	£	s.	d.		£	s.	d.
above 5	is under 5	...	0 6	above 25	but under 50	...	5 0
" 10	" 15	...	1 0	" 50	" 75	...	7 6
" 15	" 20	...	1 6	" 75	" 100	...	10 0
" 20	" 25	...	2 0	" 100	" 125	...	12 6
" 25	" 30	...	2 6	" 125	" 150	...	15 0

The amount then rises 5s. for every £50, or part of £50, *ad infinitum*.

² Fee 2s. 6d. for registration at the Company's office.

If delivery were not made within ten days,¹ Robinson ^{Buying-in.} would become liable to have the £500 stock "bought in" against him by White, that is to say, White would instruct the official broker to purchase £500 stock for him in the open market for immediate delivery, and Robinson would be liable to make good any loss which might be incurred owing to the price having risen in the mean time, or from a high price being required by a holder who could deliver at once.

If, on the other hand, Robinson had bought £1500 stock, and only sold £1000, when ticket-day came he would be obliged either to carry over the extra £500, or to pass his own name for that amount, which latter proceeding would entail the loss to him of the value of the stamp required, and the locking up of the money till he could sell the stock.

White having bought his £1000 stock, marks it, if necessary, and then returns to his office and has it entered in the day-book. The formalities and entries are similar to those which have already been described in the case of the sale by Smith, with the exception, of course, that the entries are made on the opposite sides of the various ledgers, and that the prices are different.

If this had been a cash bargain—as it could only be by ^{Cash} spécial agreement—the broker would, if a buyer, send a ^{bargains.} ticket to the jobber, or, if a seller, take one from him on the same day, and the purchase would be completed as soon as possible.

The settling-day—in this case June 15th—has been fixed ^{Settling-} some time previously by the Committee of the Stock ^{days for} Exchange.

The settling-days for English stocks (*i.e.* the "funds," ^{(i.) English} Corporation stocks, etc.) occur once a month, and are fixed at ^{stock.}

¹ This time is somewhat extended in the case of those companies which prepare their own transfers: see Rule 105.

(ii.) For-
eign stocks,
etc.

least eight days previous to the settlement of the pending account. The settlement in foreign loans,¹ and in shares of all kinds takes place twice a month, and the settling-days and ticket-days are fixed at the first meeting of the Committee in each month for the succeeding month. The settling-day in English omnium² and scrip fixes itself automatically, occurring two days prior to the respective days of payment of each of the instalments, unless payment falls on a Tuesday, in which case the settling-day is the Monday previous. In case of payment of an instalment on foreign or other scrip falling due on a settling-day, the settlement of such scrip takes place on the day previous to payment.³

(iii.) Eng-
lish
omnium
and scrip.

All bargains in the stock and shares of established undertakings, when no time for settlement is specified, are taken to have been made for the ensuing settling-day thus fixed, except that bargains in securities deliverable by deed of transfer and in bearer securities, if made after one o'clock on contango-day, are considered to be made for the following account, unless, at the time of making the bargain, the parties expressly stipulate that it is made for the existing account.⁴ A bargain may, of course, be made for any future time; but the Committee will not recognize and enforce such a bargain, if, in the case of English, India, Corporation, and Colonial Government inscribed stocks, it is made more than eight days previously to the close of the pending account,⁵ or if, in the case of registered and bearer securities, it is made for a period beyond the two ensuing accounts.⁶

Special
settling-
days

The recognition of bargains in the scrip of a new loan or in the shares of a new company is contingent upon the appointment by the Committee of a special settling-day,⁷ unless the settlement is otherwise fixed by agreement and referred to in the contract note.

(i.) For
new loans,

If it is a new loan of which a special settlement is required, an application for that purpose is made to the

¹ Rule 132.

² For explanation of this term, see p. 24, *ante*.

³ Rules 140, 141.

⁴ Rules 78, 89, 111.

⁵ Rule 79.

⁶ Rules 90, 112.

⁷ Rule 130.

Committee after three days' public notice has been given by the Secretary of the Share and Loan Department. The application must be accompanied by various documents, including a certificate, verified by the statutory declaration of the contractors or agents, stating the amount allotted, that the scrip or bonds are ready for delivery, and that they are in reasonable amounts. The Committee will then appoint a special settling-day, if no impediment exists to the settlement of the account.¹

In the case of a new company, after public notice has been given for one week, the Committee will grant a special settling-day if sufficient scrip or shares are ready for delivery, and there is no impediment to the settlement of the account. As in the case of a new loan, the application must be accompanied by a variety of documents.²

A list of prices of English and foreign stocks, shares, and other securities officially recognized on the Stock Exchange, is published under the authority of the Committee, and is called the "Official List."³ Generally speaking, any member has a right to have the prices at which he has done business recorded in this list,⁴ even if done during the "shutting,"⁵ provided it is for the "opening."⁶ But bargains made at special prices by reason of their exceptional amounts, may only be quoted with distinguishing marks.⁷

As the settling-day in the present case is the 15th of June, the 14th of June will be ticket-day, and the 13th contango-day. If all the parties to the transaction were ready to perform their parts in due course, the accounts

¹ Rule 131.

² Rule 135.

³ The Official List is published daily, and may be obtained after four o'clock from Messrs. Wetenhall, 4, Copthall Buildings, E.C.

⁴ Rules 143, 145.

⁵ *I.e.* after the official hours for closing, viz. after three o'clock.

⁶ *I.e.* the official hours for opening—eleven o'clock.

⁷ Rule 144. As to quotations generally, see Rules 142-149; and as to the quotation of newly issued bonds, scrip, and shares, see Rules 132, 133, and 136-139.

would be sent out on June 13th, the tickets passed on the 14th, and the securities delivered on the 15th, or as soon as possible afterwards, and paid for on delivery.¹ Supposing, however, that Jones, either because his purchase is speculative, or for some other reason, is desirous of not paying for the security which he has bought until the following account, and that Adams and Brown are equally desirous of not making delivery till the succeeding account. They will, on or before contango-day, instruct their respective brokers to that effect, and thereupon there will take place a process which is called a "continuation" or "contango."

Method of
carrying-
over.

In order to effect the continuation in the case of the purchaser, Jones's broker, White, will, on contango-day, enter into two fresh contracts with the jobber. By the first of these contracts Jones will sell to the jobber, for the 15th of June, £1000 Brighton A at a price fixed by the officials of the House, which is called the making-up price. The effect of this will be to close the contract already open for the existing account. By the second contract Jones makes another purchase of £1000 Brighton from Robinson for delivery on the settling-day in the following account at the making-up price. These contracts need not, and probably will not, be made at the same price as that at which Jones bought on the 1st of June. A security is continually rising or falling in value, and it is improbable that there will not have been some fluctuation in the price of Brighton A stock between June 1st and 13th. Suppose that by the 13th the stock has risen two per cent. in value. On the mornings of contango-day and ticket-day² the clerk of the House, taking the actual middle³ price at twelve o'clock, will fix that price

Making-up
prices.

¹ This is, of course, between broker and broker. The seller and the purchaser, outside the Stock Exchange, would respectively have delivered the security and paid the cheque probably some days before the one received a cheque and the other the security.

² The making-up price is fixed, and bargains are carried over, on each of these two days.

³ If at twelve o'clock on contango-day the price of Brighton A stock was $150\frac{1}{4}-\frac{1}{2}$, the middle price—and consequently the making-up price—would be $150\frac{3}{8}$.

as the making-up price for the particular stock.¹ At the price thus fixed all bargains must be continued. If it happens that no making-up price has been fixed—as is the case with securities in which there are not frequent dealings—continuations are effected at a price mutually agreed upon, probably the price at which the bargain was originally made.

If the making-up price is fixed at $152\frac{1}{2}$, Jones having bought a £1000 stock at $150\frac{1}{2}$ and sold at $152\frac{1}{2}$, makes a profit of £10 on the transaction. But as he buys again at $152\frac{1}{2}$, and will have to pay that price on the settling-day at the end of June, it is evident that the profit thus obtained is, or may be, merely a temporary one.

If at the time of the continuation there is a large "bull" account open—that is to say, a larger amount of this particular stock has been bought for the settlement than the buyers are prepared to take up—Jones will be obliged to pay a "contango" or rate of interest on the money which has, in effect, been lent² to him by the person who has consented to hold or take up the stock in his stead—in the present case to Robinson, as a consideration for not compelling him to take delivery. If, however, there is a large "bear" account open—that is to say, a larger amount of this particular stock has been sold for the settlement than the buyers are prepared to deliver—Jones will, on the contrary, receive a "backwardation," or sum of money, in consideration of his not enforcing delivery. Where, however, the bull and bear accounts are fairly evenly balanced, the speculative purchaser will probably be obliged to pay a contango for continuation of the same stock on which the speculative seller is at the same time paying a backwardation.³

¹ As to making-up prices in Government and Corporation stocks, see Rule 88.

² The Court of Appeal, however, has held that a continuation, though having the appearance of a loan of the stock, is in reality a purchase and sale combined with a supplementary agreement to return a similar amount of the same stock at the following account. See p. 237, *post*.

³ The jobbers, through whom the larger part of the continuations at each account are effected, so arrange the continuation rates that they

The process will be repeated in the case of Adams and Brown, except, of course, that as they were originally sellers, the first contract made with Robinson, the jobber, will be a contract of purchase to close the transaction for the present account, while the second is another contract of sale to open for the new account; that, the making-up price being $152\frac{1}{2}$, whereas Jones made a profit of £10 on the account, Adams and Brown each make a loss of £5; and that Adams and Brown pay a backwardation or receive a contango, as the case may be.

The brokers having thus effected the continuations on behalf of their respective principals, send them the bought and sold notes of the various transactions, make the entries in their books in the regular course, and on the evening of the same day forward the accounts showing the amounts due to and from the principals, of which payment will have to be made two days later on settling-day.

Jones's account will be in the following form :—

Form of
account.

ACCOUNT, 15 JUNE, 1896.

Jones, Esq., in account with White & Co.

DR.		21, Throgmorton Gardens, London, E.C.						CR.		
June 1	1000	L. B. & S. C. R. Deferred stock	£	s.	d.	June 15	By cash or balance (to pay)	£	s.	d.
			1520	9	0			1520	9	0
							Balance brought down	48	6	6

may obtain a profit in the usual manner, viz. by the difference between the amounts paid respectively by the seller and the purchaser. A certain number of continuations are effected with persons outside the Stock Exchange, as, for instance, with banks. This is known as "contangoing off the market." The brokers also now have a considerable share in the profits arising from accommodating speculative principals. See *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140, where the broker arranged with his principal to borrow money from the bank at 4 per cent. and lent it to the principal at $4\frac{1}{2}$ per cent.

In the present instance a continuation will be effected in the case of all three of the parties to the transaction, and the matter will therefore be very easily adjusted. The jobber, finding that both parties desire a postponement of completion, will, according to the state of the market, charge one of the parties a contango, or the other a backwardation, and will himself receive a profit from the transaction in the usual manner;¹ the parties will pay to or receive from their brokers the difference (if any) caused by the making-up prices, together with the continuation rate; the brokers will in turn make or receive payment to or from the jobber; and the matter will be adjusted until the following account.

It is probable that in this case the continuation will take the form of a payment of differences merely, and that there will be no delivery of stock at all. But it is not a necessity that the continuation should take place between the same persons as were parties to the original transaction. It may, of course, be that only one of the parties requires a continuation, while the others desire to complete their part of the transaction. Let us suppose that Adams and Brown wish to make delivery; then, unless the jobber is himself willing to hold the stock, Jones must either take delivery of it or must find some one to do so for him. If Robinson, the jobber, is unwilling to hold the stock for Jones until the settling-day in the succeeding account, in consideration of the contango, Jones's broker will go into the market and find some one who is ready to do so. In this case, therefore, there will be a delivery of stock, tickets will pass, and the transaction be completed in the ordinary course, but some other person's name will be substituted for that of Jones as the recipient of the stock. This, of course, will leave Jones free to open a fresh contract for the new account exactly as if no stock had passed.

While a continuation may or may not result in the delivery of stock or shares, a contango or a backwardation,

¹ Where the jobber acts as a channel between two parties, both of whom wish to carry over, the jobber's profit accrues in the usual manner by the difference between the rates which one of the parties pays and the other receives.

Carrying-over
(a) where no stock delivered.

(b) Where stock delivered or taken in by third party.

and sometimes both, will invariably have to be paid in respect of the accommodation granted, the amount depending upon the state of the account, the class of security, the rates prevailing at the time in the money market, the credit of the borrower, and the demand for accommodation.

Although a person who obtains stock or shares as the result of a continuation is commonly said to "take in" or borrow, as the case may be, such stock or shares, the transaction is in reality one of purchase and sale, and not of loan.¹ It is true that the "taker-in" or borrower of the stock or shares is or may be obliged to return a similar amount at the succeeding settlement, but this is the result of a second contract of purchase or sale, not of an original loan. It is obvious, therefore, that the taker-in or borrower of stock in the case of a continuation is entitled to deal with it as owner, whereas the lender of money on the security of stock or shares is not entitled to place such stock or shares beyond his immediate control.²

The continuations having been thus effected and the accounts duly settled, the bargains remain in suspense until the following settlement. We will suppose that at the following settlement all the parties are ready to complete the bargain by paying for and delivering the stock which they have respectively bought and sold. On the contango day, as the contracts are not to be continued, the brokers in the present instance have nothing to do except make up and post their clients' accounts.

There is, however, a process conducted on contango day,

¹ *Bongiovanni v. Soci   G  n  rale* (1886), 51 L.T. 320. The taker-in of stock upon a continuation, as the term is commonly used in the Stock Exchange, is a person who accommodates a speculative purchaser by relieving him of stock which he has bought but does not wish to take up until the following account, while the borrower is a speculative seller, who having sold stock has not wherewithal to make delivery, and is accordingly compelled to obtain a loan of the stock until the following account.

² *Langton v. Waite* (1868), L.R. 6 Eq. 165; 37 L.J. Ch. 345; 18 L.T. 80; 16 W.R. 508. See Rule 70, which appears to have been framed with a view to the requirements of the law as laid down in the above two cases.

with the object of facilitating the work of the settlement, ^{Making up.} which is deserving of notice, although, owing to its practical supersession in the settlement of London business by the Clearing House system, it is no longer of first-rate importance. The process in question is called "making-up." The clerks meeting in the settling-rooms on ticket-day read their books against one another, and where a security is found to pass in a circle between three or more parties, one or more of the parties drop out of the transaction, merely paying or receiving differences, and leave the matter to be settled between the ultimate parties to the transaction. For instance, where A. has to deliver to B., B. to C., and C. to D., the parties confer, B. and C. drop out and leave A. and D. to complete the actual transaction, settling their accounts by putting the stock through at the making-up price.

On the second day of the settlement, called "name-day," or ^{Tickets.} "ticket-day," the process is commenced which is to bring the original vendor and the ultimate purchaser into connection with each other by enabling the name of the person to whom there is to be an actual transfer of the security to be traced through a long line of intermediate vendors and purchasers.

In the present instance, between 10 and 12 o'clock on ticket-day, White & Co. will issue a ticket in the following form:—

If this Ticket be divided, the No. must be copied in the New Ticket with the name of the party making the division, otherwise the New Ticket will not be paid for.

All rights to Dividends and New Stock are hereby claimed.		Form of
No. 10000.		ticket.
£1000 Brighton A @ 150½	Consideration £1505.	
To Jones, Esq.	M/n @ 152½	1525 0
of etc., etc.	Stamps	7 15
		<u>£1532 15</u>
Given to Robinson & Co.	White & Co., pay.	
June 30, 1896.	21, Throgmorton Gardens, E.C.	

Having issued the ticket, the broker White makes a

¹ These forms vary slightly in the different offices, but for practical purposes they are the same.

further entry in his jobber's ledger to close the account with the jobber. The entry of the entire transaction in White & Co.'s ledger will therefore be as follows:—

JOBBER'S LEDGER.

ROBINSON (JOBBER).

Dr.						Cr.					
1896			£	s.	d.	1896			£	s.	d.
June						Cgo					
1	1000						1000				
	Brighton A	150½	1505	0	0		A	152½	1525	0	0
30	1000										
	Brighton A	152½	1525	0	0						
	n ¹										
	Difference										
	to pay		20	0	0						

In many instances, the broker opens in his books another account headed "Ticket Account," in which are posted all tickets on which stocks or shares are to be delivered or received. But the practice as to this varies very much in the different offices.

Delivery of tickets.

The issue and delivery of tickets are governed by precise regulations, which vary according to the security involved.

(a) In the case of English and India Government, or Corporation Stock, the ticket must be issued by 12.30 o'clock on settling-day, and if not so issued, any loss or charge incurred will fall upon the issuer of the ticket.²

(b) If the security be Colonial Government Inscribed Stocks the buyer must issue a ticket before 2 o'clock on ticket-day.³

(c) The buyer of securities deliverable by deed of transfer may, as early as 10 o'clock on ticket-day, or even on the previous day, and must before 12 o'clock on ticket-day, issue a ticket with his own name as payer of the purchase-money, which ticket shall contain the amount and denomination of the security; the name, address, and description of the transferee in full; the price, the date, and the name of the member to whom the ticket was issued. Each intermediate

¹ N. means "name."

² Rule 81.

³ Rule 82.

seller to whom the ticket is passed must endorse on it the name of the person who sold to him. Persons receiving tickets after certain specified hours must make a note of the time on the back of the ticket.¹ The purchaser of these stocks and shares must state on the ticket the amounts in which he desires that they shall be transferred.²

(d) In the case of securities to bearer the tickets must be passed between 10 and 1 o'clock, but may not be issued later than 12.30. They do not bear any price, and accounts made up therewith must be settled at the making-up price of the day.³ Bearer tickets must have distinctive numbers, and be for specified amounts, lesser amounts being settled without tickets. Every member must endorse on the ticket the name of the member to whom he passes it. These tickets may not be split.⁴

The ticket, having been duly issued by White, comes into the hands of Robinson, who enters it in his "List." But Robinson sold £1000 Brighton "A" in a single lot, while he bought it in two lots of £500 each. Instead, therefore, of the single ticket which he has received from White, he is obliged to issue two tickets to Smith and Thomas in the same form, but for a smaller amount and consideration. These tickets are called "splits," and the split issued to Smith will be in the following form :⁵—

Split by Robinson & Co.		£752 10 0	Form of
No. 10000.		4 0 0	split ticket.
£500 Brighton A	@	150½	
		152½	
To Jones, Esq.			
of etc., etc.			
30 June, 1896.		White & Co., pay.	

A purchaser cannot object to his ticket being split, and is bound to pay for any portion of shares or stock which may

¹ Rule 94.

² Rule 100.

³ See Rule 116.

⁴ Rule 116.

⁵ These forms vary slightly in the different offices, but for practical purposes they are the same. No details beyond such as are absolutely necessary are given on a split.

be presented, provided that the number of shares is not less than ten, nor the value less than £200,¹ while in practice it is usual to accept any reasonable amount. The member, however, who splits a ticket is bound to pay any increased expense incurred thereby, owing to a multiplication of stamps and transfer fees.² A purchaser is also bound to repay to the deliverer any call made on registered shares, and paid by the deliverer, although not due at the time of delivery.³

Selling-
out and
buying in.

If the vendor's broker does not receive a ticket by 2.30 o'clock he may re-sell, through the official brokers, the stock which he has already contracted to sell elsewhere;⁴ and any loss incurred by such re-sale will be borne by the person to whose fault it is owing that the ticket did not reach the vendor's broker in due time.⁵ But supposing Smith to have received the ticket within the time allowed by the rules, on the evening of ticket-day he will proceed to make out a transfer of the stock to Jones. This he will forward to Adams, the vendor, for execution. Delivery of the stock may be made either on settling-day or on any of the ten succeeding days, but if delayed longer, the purchaser's broker is at liberty to "buy in" the stock through the official brokers, and any loss occasioned by such buying-in will be borne either by the original vendor, or by any member who is proved to have caused undue delay in passing the ticket.⁶

Clearing
House.

The majority of those securities in which a large volume of business is usually transacted during an account are settled by the aid of the Clearing House. In the case of highly speculative shares which do not "clear," it is not

¹ Rule 101.

² Rule 94.

³ Rule 99.

⁴ If, on the other hand, stock which has been bought is not duly delivered, the purchaser is entitled, after notice, to buy in the stock, that is, to buy a similar amount of stock and charge the seller with any loss incurred.

⁵ Rules 94, 103.

⁶ Rules 105, 106.

unusual to find the backs of the tickets endorsed with twenty or thirty names, and in times of great activity tickets bearing a hundred names are not unknown. But in such cases the tickets often pass through the same hands, and are endorsed with the same names several times during a single settlement; and it was to obviate this unnecessary labour that the Clearing House was introduced. All securities do not clear, but the tendency is to admit to the advantages of the system all the more active stocks and shares.¹ Nor are all members of the Stock Exchange members of the "clearing," for a jobber who deals exclusively in a non-clearing stock would obviously obtain no benefit from membership. But as to those stocks which do clear, and those members of the Stock Exchange who are members of the clearing, the system is as follows:—On the afternoon of *contango* day the Clearing House supplies to each member, on application, a number of sheets with a list of members of the clearing. In each fresh class of stock or shares a new sheet is used; on one side of the sheet are set out the names of those from whom securities have been bought, on the other side the names of those to whom securities have been sold, with the respective amounts. The lists when made out are handed in to the Clearing House, the clerks make a trace through from the taker of securities to the deliverer, and on the morning of ticket-day they give a memorandum of any discrepancies between the sheets thus handed in and the sheets of other members of the clearing. In the case of registered securities names will be passed to or received from the Clearing House on ticket-day, according as, on balance, a member is to receive or deliver securities. In the case of securities to bearer on the morning of account-day a member will, on applying to the Clearing House, receive tickets on which to deliver such securities as, on balance, he has to take. Cheques are then paid in the ordinary way to the members to whom they are due, but do not pass through the

¹ Shares in the Australian mining market did not clear until the year 1896, although a large business had been done in them for many months previously.

Clearing House; while intermediate parties pay or receive the amounts due from or to them, as they would do in the ordinary course.

Transfers
and certi-
ficates.

On receipt from Adams of the transfer deed duly executed, Smith will deliver it to White, either with the share certificate, or after having had the transfer certified by the company. If there is a certificate for the actual amount sold, that certificate is forwarded with the deed of transfer; but if, for instance, Adams is selling a portion only of the holding, the transfer, with the certificate for the whole amount of holding, is forwarded to the company, who then certify on the deed that the certificate is at their office, and presently make out two new certificates, one for the purchaser, and a "balance" certificate for the vendor.¹ White, on receiving the deed of transfer, hands a cheque for the amount due to Smith, who, after deducting his commission, and paying to or receiving from the jobber anything that may be due to or from him, pays the residue over to Adams.

White, the purchasing broker, now forwards the deed of transfer to his client, Jones, for execution. It is then returned to White, who forwards it to the company for registration. A few days later the vendor will receive a notice from the secretary of the company, stating that the transfer deed has been lodged for registration, and that if no notification to the contrary be received within a specified time, it will be assumed to be correct, and will be dealt with by the directors in the usual way. No answer being received to this communication, the company will in due time register the transfer, and issue a new certificate to Jones.² Proceedings are similarly conducted between Jones and his broker and the other vendor, Brown, and his broker, Thomas, and the transaction of purchase and sale is complete.

¹ See Rule 102 as to certification by the Share and Loan Department of the Stock Exchange.

² As to the liability of a company in the case of forged certificates, or certificates, the issue of which is obtained by fraud, see pp. 233, 234, *post.*

CHAPTER V.

STOCK EXCHANGE SECURITIES.

THE securities, with which the business of the Stock Exchange is chiefly concerned, are British and foreign Government loans, the bonds, debentures and stock of such public bodies as borough and county councils, and the shares and stock of public companies.

Government loans are either funded or unfunded. But the word "funded" has a more restricted meaning when applied to British Government securities than in the case of loans issued by the Governments of foreign countries. In its strict sense the word implies that the principal and interest of the loan are secured upon some specified source of revenue. In this sense British Government securities are unfunded, being payable generally out of the annual Parliamentary supplies, while many foreign loans are funded. The words are, however, more generally used to draw a distinction between those loans for the repayment of which a date is not fixed, and which are only redeemable at the option of the Government that issues them, and those which are repayable at a specified future date. In this sense the former are said to be funded, while the latter are unfunded; and it is in this sense that the "British Funds" are spoken of.

The British Funds, which comprise those securities that are usually referred to as consols, are transferable at the Banks of England and Ireland. The National Debt Act, 1870,¹ contains the following provisions as to stocks, which are so transferable.²

The
"British
Funds."

¹ 33 & 34 Vict. c. 71.

² As to the actual method of proceeding in making a transfer at the bank, see p. 222, *post*.

Transfers. In the offices of the respective accountants of the Banks of England and Ireland books are kept, in which all transfers of such stocks are to be entered. Every transfer is to be signed either by the transferor himself, or by his agent, lawfully authorized, by writing under his hand and seal, such writing to be attested by two or more credible witnesses. The transferee may also sign if he thinks fit.¹

Deceased stockholder. The interest of a deceased stockholder is transferable by his executors or administrators notwithstanding any specific bequest thereof. But the banks are empowered to, and as a matter of fact do, require that the probate of the will of, or the letters of administration to, the deceased, shall be first left with them for registration, and in case of a will, all the executors who have proved are required to join in the transfer.²

Evidence of transferor's title. The banks may, if it appears to them expedient, before allowing any transfer of stock to be made, require evidence of the title of the person who claims to make the transfer.³

Joint-tenancy. These stocks may be transferred to, and held in the names of an individual and a body corporate, and any such holding shall, in its relation to the banks, be deemed to be a joint tenancy.⁴

Certificates. Stock certificates are issuable to the holders of certain of these funds, but only in sums of £50, and multiples of £50 not exceeding £1000.⁵ Unless a name is inscribed in the certificate, the bearer is entitled to the stock, and the certificate is transferable by delivery. The certificate may, however, be converted into a nominal certificate by the insertion of the name, address, and description of some person, when it ceases to be transferable, and the person whose name is

¹ 33 & 34 Vict. c. 71, s. 22.

² *Ibid.* s. 23.

³ *Ibid.* s. 24.

⁴ 55 & 56 Vict. c. 39, s. 6; passed, no doubt, in view of the decision of Matthew, J., in the *Law Guarantee and Trust Society v. Bank of England* (1890), 24 Q.B.D. 406; 62 L.T. 496; 38 W.R. 493, that the Court would not grant a mandamus to compel the bank to register a transfer in the joint names of the society and one Hunter.

⁵ 33 & 34 Vict. c. 71, ss. 26, 27, 28.

inscribed, or persons deriving their title from him by devolution of law, will alone be recognized by the banks.¹ The banks are not fixed with notice of any trust in respect of any stock certificate or coupon,² and a trustee is not permitted to hold a certificate unless authorized to do so by the terms of the trust.³ If a certificate is lost, the banks will issue a new certificate on receiving a satisfactory indemnity.⁴ A fee not exceeding five shillings on every hundred pounds of stock included in the certificate is charged upon its issue.⁵

Coupons are annexed to a stock certificate, comprising the dividends payable for not less than the next five years in respect of the stock described in the certificate. On the expiration of this period fresh coupons are issued for a further period of not less than five years, and so on.⁶ Coupons are payable at the chief establishments of the banks at the expiration of three clear days from the day of presentation, and at branch establishments, which are situate more than ten miles from the chief establishments, at the expiration of five clear days. By payment to the bearer of a coupon of the amount expressed therein, the banks obtain a complete discharge from all liability in respect of such coupon and the dividend represented thereby.⁷ Income tax is deducted before payment of the coupons, even though the dividend represented is less than fifty shillings.⁸

Before paying dividends the banks may, if they think it expedient, require evidence of the title of the person who claims to be entitled to receive them.⁹ Executors and administrators may be required to leave with the banks for registration, the probate of the will or the letters of administration.¹⁰ If an infant or a lunatic is a joint stockholder, a letter of attorney from the person who is not under disability,

¹ 33 & 34 Vict. c. 71, s. 32.

² Ibid. s. 30.

³ Ibid. s. 29. See too 56 & 57 Vict. c. 53, s. 7.

⁴ Ibid. s. 38; and see 55 & 56 Vict. c. 39, s. 7.

⁵ Ibid. s. 37, and third schedule.

⁶ Ibid. s. 34.

⁷ Ibid. s. 35.

⁸ Ibid. s. 36.

⁹ Ibid. s. 18.

¹⁰ Ibid. s. 17.

witnessed by two or more credible witnesses, is sufficient authority for the payment of dividends, though the banks may still require proof of the alleged infancy or unsoundness of mind.¹ The dividends may be paid by sending warrants through the post at the request of the stockholder, such request being made in a form approved by the banks and the Treasury.² Every warrant sent by post is deemed to be a cheque, and may be crossed and treated accordingly.³

Foreign
funds.

The chief matter to be considered in buying foreign Government securities is whether they are funded or unfunded, in the sense of being secured in some particular source of revenue or not. But it is to be noticed in this connection that the words "stock in the foreign funds" occurring in a will, have been held to comprise all foreign securities for which the faith of a foreign country was pledged.⁴

As to what are Government securities, a direction to trustees to invest money "upon any of the stocks or funds of the Government of the United States of America, or the Government of France, or any other foreign Government," has been held to authorize an investment in New York and Ohio stock, and Georgia bonds.⁵ But, on the other hand, a bequest of "foreign bonds amounting to about £8000," has been held not to include bonds issued by the colony of New South Wales, although such bonds formed part of the amount mentioned.⁶

Indian and
colonial
securities.

Indian and Colonial bonds, debentures, and stock, are created under a variety of statutes passed, in the case of

¹ 33 & 34 Vict. c. 71, s. 19.

² Ibid. ss. 20, 21.

³ Ibid. s. 20; 32 & 33 Vict. c. 104; 21 & 22 Vict. c. 79, s. 2; 56 & 57 Vict. c. 64, s. 5, sub-s. 3.

⁴ *Ellis v. Eden* (1857), 23 Beav. 543; 26 L.J. Ch. 533.

⁵ *Cadett v. Earle* (1877), 5 Ch. D. 710; 46 L.J. Ch. 798.

⁶ *Hull v. Hill* (1876), 4 Ch. D. 97.

India, by the English Government, and in the case of self-governing colonies, by the respective Colonial Governments. The repayment of such loans is in some instances guaranteed by the Imperial Government.¹

Many public bodies are authorized by the Acts which constitute them to raise loans for various purposes, and to issue stock which may be dealt with, transferred, and redeemed subject to prescribed regulations. The Local Government Act, 1888, for instance, authorizes county councils to borrow money for the purposes, and subject to the restrictions therein specified, and to create county stock by way of security.² Municipal corporations and other local authorities have similar powers.

Public companies have either a limited or an unlimited liability. In the great majority of the companies formed at the present time, the liability of the shareholders is limited under the provisions of the Companies Act, 1862, and companies whose shareholders' liability is so restricted, are obliged to bear the word "Limited" affixed to the company's name.³ The liability of the shareholders may be limited by guarantee, or by the amount, if any, remaining unpaid upon their shares, the latter being the usual method of restricting liability.⁴

When a company is limited by shares, if the shares are fully paid up so that there is no further liability upon them, the Act enables them to be converted into stock.⁵ But when thus consolidated the stock still possesses all the qualities of shares, so that a bequest of shares in a company is sufficient to pass the stock as well.⁶

¹ See, for instance, 33 & 34 Vict. c. 82 (Canada Defences Loan Act, 1870).

² 51 & 52 Vict. c. 41, ss. 69, 70.

³ 25 & 26 Vict. c. 89, ss. 8, 9.

⁴ Ibid. s. 7.

⁵ Ibid. ss. 12, 28, 29.

⁶ *Morris v. Aylmer* (1875), L.R. 7 H.L. 717; 45 L.J. Ch. 614; 34 L.T. 218; 24 W.R. 587.

Railway
companies.

The shares of railway companies are divided into three classes: preferred, ordinary, and deferred; and these shares, when fully paid up, may be converted into corresponding classes of stock. The above shares rank in the order named for payment of dividends, and the preferred shares are accordingly a better security than are the other two classes. Nevertheless, a power to invest trust money "upon the security of the funds of any company incorporated by Act of Parliament," was formerly held not to authorize an investment in preference stock or shares.¹ Nor did a power to invest trust funds in "bonds, debentures, or other securities, or the stocks or funds of any colony or foreign country," authorize an investment in the bonds of a French railway company the payment of the capital on which within fifty years was secured by a sinking fund, which, together with interest in the mean time, was guaranteed by the French Government.² But these cases are now qualified by the provisions of the Trustee Act, 1893.³

The payments of the dividends and capital of such undertakings is sometimes guaranteed by another similar undertaking, or in the case of foreign railways by the Government of the foreign State. But in some instances that which is described as a guarantee amounts to nothing more than a preference of a particular class of shareholders.⁴

Railway companies also issue debenture stock as security for loans of money, the repayment of the loan being charged upon the plant and other assets of the company for the time being.

Subject to the provisions of the Trustee Act, 1893, even should the trust instrument give to the trustees an apparently uncontrolled discretion as to the investment of the trust funds, the Court will not permit an investment in

¹ *Harris v. Harris* (1861), 29 Beav. 107. See, too, *Stewart v. Sanderson* (1870), L.R. 10 Eq. 26; 39 L.J. Ch. 337; 22 L.T. 10; 18 W.R. 278.

² *In re Langdale's Settlement Trusts* (1870), L.R. 10 Eq. 39.

³ See Note, at end of chapter.

⁴ *Bouch v. Sevenoaks, etc., Railway Co.* (1879), 4 Ex. D. 133; 48 L.J. Ex. 338; 40 L.T. 560; 27 W.R. 507.

securities which are of a determinable character, and if such an investment is made will compel the trustees to refund any loss that may be incurred thereby.¹

In connection with the securities of which mention has been made, it will at times become a question of the greatest importance to notice whether they are negotiable or not. If they are negotiable, a person who takes them for value and in good faith, without any circumstances occurring to arouse suspicion, obtains a title independent of that of the person from whom he received them.² But if they are not negotiable, or, even though negotiable, if there are circumstances which should have put a person receiving them upon inquiry,³ the holder will only take them subject to the equities which affected the title of his predecessor.

A negotiable instrument is an instrument which is of such a nature that by the custom of trade it is transferable, like cash, by delivery, and is capable of being sued upon by the person holding it *pro tempore*, the property in the instrument passing to any person who takes it *bonâ fide* and for value, whatever may be the defects in the title of the person transferring it to him.⁴ But in order that a usage among commercial men to treat any class of securities as negotiable may be recognized by the courts as a legally

¹ *Stewart v. Sanderson* (1870), L.R. 10 Eq. 26; 39 L.J. Ch. 337; 22 L.T. 10; 18 W.R. 278.

² *London Joint Stock Bank v. Simmons* [1892], A.C. 201; 61 L.J. Ch. 723; 66 L.T. 625; 41 W.R. 108; *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140.

³ *Sheffield v. London Joint Stock Bank* (1888), 13 App. Cas. 333; 57 L.J. Ch. 986; 58 L.T. 735; 37 W.R. 33. But mere neglect on the part of a transferee of a negotiable instrument to avail himself of means at his disposal to detect the bad title of the transferor, does not constitute a defence to an action on the instrument by the transferee: *Venables v. Baring* [1892], 3 Ch. 527; 61 L.J. Ch. 609; 67 L.T. 110; 40 W.R. 699.

⁴ *London and County Banking Co. v. London and River Plate Bank* (1887), 20 Q.B.D. 232, at p. 239. See also *A.-G. v. Bouvens* (1838), 4 M. & W. 171; *Goodwin v. Roberts* (1876), 1 App. Cas. 476; 45 L.J. Ex. 748; 35 L.T. 179; 24 W.R. 987.



binding custom, it must be proved to be generally accepted and acted upon.¹

Value.

A somewhat singular point with regard to what constitutes value was decided in the case of the *London and County Banking Co. v. London and River Plate Bank*.² The manager of the latter bank had incurred losses in Stock Exchange speculations, and as security for the losses foreign and colonial bonds, which belonged to clients of the River Plate Bank and had been abstracted by the manager from the bank, were deposited with the London and County Bank, which received them in good faith and without notice. Subsequently the manager obtained the return of the bonds in order that they might be exhibited on the audit-day at the River Plate Bank, and they were re-deposited with that bank. The manager was afterwards convicted of the fraud. The London and County Bank thereupon brought an action claiming the return of the bonds, on the ground that the River Plate Bank had not given any consideration for their re-deposit. The Court of Appeal, however, held that, as the manager was under a civil obligation to return the bonds or to pay their value, there was consideration for the re-deposit, and that, although at the time of the re-deposit the bank did not know of the proceedings, in the absence of evidence to the contrary their acceptance must be presumed, and that they were therefore *bonâ fide* holders of the bonds for value, and were entitled to retain them.

Government securities.

In *Gorgier v. Mieville*,³ Prussian bonds; in *Heseltine v. Siggers*,⁴ Spanish bonds; in *Goodwin v. Robarts*,⁵ fully paid Russian and Hungarian scrip; and in the *London and County*

¹ *Crouch v. Credit Foncier of England* (1873), L.R. 8 Q.B. 374; 42 L.J. Q.B. 183; 29 L.T. 259; 21 W.R. 946. The length of time during which the custom has existed appears to be only material as determining the generality of its acceptance; see the judgment of Cockburn, C.J., in *Goodwin v. Robarts*, L.R. 10 Ex., pp. 355, 356. For a general exposition of the history of the law of negotiability, see L.R. 10 Ex., pp. 338-358, and *Lang v. Smyth* (1831), 7 Bing. 284.

² (1888), 21 Q.B.D. 535; 57 L.J. Q.B. 601; 37 W.R. 89.

³ (1824), 3 B. & C. 45.

⁴ (1848), 1 Ex. 856; 18 L.J. Ex. 166.

⁵ (1876), 1 App. Cas. 476; 45 L.J. Ex. 748; 35 L.T. 179; 24 W.R. 987.

Banking Co. v. London and River Plate Bank,¹ Unified Egyptain bonds, Egyptain Preference Government bonds, and New South Wales bonds, were respectively held to be negotiable instruments.

In *Crouch v. Credit Foncier of England*² it was held that debentures issued under the company's seal, and subject to certain conditions as to half-yearly drawings, were not negotiable, and the Court expressed a doubt as to whether instruments under the seal of a corporation could under any circumstances be regarded as negotiable. But it seems probable that now, provided a company is empowered by its articles of association to issue negotiable instruments, if it is proved that securities issued by such company customarily pass by delivery, the courts will hold them to be negotiable.³

In *Rumball v. Metropolitan Bank*,⁴ scrip certificates, which certified that after payment of all instalments the bearer would be entitled to be registered as the holder of shares in the bank, were held to be negotiable.

Although the question has not yet come before the courts, there does not appear to be any reason to doubt that where shares in a company are transferable by share warrants to bearer which customarily pass by delivery merely, vesting in the person who for the time being holds them the property in the shares, and entitling him to be placed on the register in respect of the shares, such share warrants would be held to be negotiable instruments.⁵

¹ (1883), 21 Q.B.D. 535; 57 L.J. Q.B. 601; 37 W.R. 89.

² (1873), L.R. 8 Q.B. 374; 42 L.J. Q.B. 183; 29 L.T. 259; 21 W.R. 946.

³ See L.R. 10 Ex., p. 356; *Ex parte City Bank* (1868), L.R. 3 Ch. 758; 18 L.T. 894; 16 W.R. 919; *Ex parte Colborne and Strawbridge* (1870), L.R. 11 Eq. 478; 40 L.J. Ch. 93; 23 L.T. 515; 19 W.R. 223; *Vennables v. Baring* [1892], 3 Ch. 527; 61 L.J. Ch. 609; 67 L.T. 110; 40 W.R. 699.

⁴ (1877), 2 Q.B.D. 194; 46 L.J. Q.B. 346; 36 L.T. 240; 25 W.R. 366.

⁵ Section 27 of the Companies Act Amendment Act, 1867 (30 & 31 Vict. c. 131) authorizes the issue of share warrants for fully paid-up shares or for stock, by companies whose regulations, either as originally framed, or as altered by special resolution, provide for such warrants. And sec. 28 provides that when such warrants are issued mere delivery of the warrants shall pass the property in the shares.

NOTE.—The Trustee Act, 1893,¹ makes the following provisions as to the investment of trust funds:—

Section 1.—A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following; that is to say:

- (a) In any of the parliamentary stocks, or public funds, or Government securities of the United Kingdom;
- (b) On real or heritable securities in Great Britain or Ireland;
- (c) In the stock of the Bank of England or the Bank of Ireland;
- (d) In India three and a half per cent. stock and India three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India;
- (e) In any securities the interest of which is for the time being guaranteed by Parliament;
- (f) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District;
- (g) In the debenture or rent-charge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of the investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock;
- (h) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity, or for a term of not less than two hundred years, at a fixed rental to any such railway company as is mentioned in sub-section (g), either alone or jointly with any other railway company;
- (i) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India;
- (j) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde, Punjaub, and Delhi railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act

¹ 56 & 57 Vict. c. 53.

- of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants Class C of the East Indian Railway Company;
- (k) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed;
 - (l) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock;
 - (m) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any County Council, under the authority of any Act of Parliament or Provisional Order;
 - (n) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorized by law to be levied;
 - (o) In any of the stocks, funds, or securities for the time being authorized for the investment of cash under the control or subject to the order of the High Court;¹

And may also from time to time vary any such investment.

¹ The securities so authorized at present are contained in Order 22, Rule 17, of the Supreme Court Rules, 1888. With the exception of Exchequer bills the above list apparently includes all the securities contained in the Order, but the provision gives a power extending the list of trust investments without the necessity of resorting to an Act of Parliament.

Section 2.—(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in sec. 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-ss. (*g*), (*i*), (*k*), (*l*), and (*m*) of sec. 1, which is liable to be redeemed within fifteen years of the date of the purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

Moreover, unless the instrument which creates the trust forbids such an investment, under

Section 5.—(2) A trustee who is empowered to invest in the mortgages or bonds of any railway company or of any other description of company, may invest in the debenture stock of a railway company or such other company;

(3) A trustee who is empowered to invest money in the debentures or debenture stock of any railway or other company, may invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875;¹

(4) A trustee who is empowered to invest money in securities in the Isle of Man, or in securities of the Government of a colony, may invest in any securities of the Government of the Isle of Man under the Isle of Man Loans Act, 1880;²

(5) A trustee who has a power to invest trust-moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in or upon the security of mortgage debentures duly issued under and in accordance with the Mortgage Debenture Act, 1865.³

¹ 38 & 39 Vict. c. 83.

² 43 & 44 Vict. c. 8.

³ 28 & 29 Vict. c. 78.

CHAPTER VI.

FORMATION OF THE CONTRACT.

THE provisions of the Statute of Frauds,¹ which require written evidence of certain classes of contracts, so rarely affect contracts for the purchase and sale of stocks and shares, that it may be broadly stated that writing is not required in case of such agreements. For stocks and shares are not goods, wares, and merchandise within the meaning of the seventeenth section of the statute;² nor, as a general rule, do they fall within the terms of the fourth section, by which a written memorandum is prescribed as a condition precedent to taking action either where the subject of the agreement is an interest in or concerning land,³ or where the agreement is one, the performance of which, at the time of making it, the parties contemplate extending over a longer period than one year.

Contract
unaffected
by Statute
of Frauds.

On the first of these three points the law is too well settled to admit of any doubt, or apparently of any exception, and it may now be taken as correct that a contract for

Sections
4 and 17.

¹ 29 Car. II. c. 3.

² *Humble v. Mitchell* (1839), 11 A. & E. 205; *Duncuft v. Albrecht* (1841), 12 Sim. 189; *Boulby v. Bell* (1846), 3 C.B. 284; 16 L.J. C.P. 18. Following the principle of these decisions, scrip in a railway company has been held not to be goods, wares, and merchandise within the meaning of the Stamp Act, 55 Geo. III. c. 184; *Knight v. Barber* (1846), 16 M. & W. 66; 16 L.J. Ex. 18. Moreover, shares are apparently not goods within the meaning of the Sale of Goods Act, 1893.

³ *Bradley v. Holdsworth* (1838), 3 M. & W. 422; *Duncuft v. Albrecht*, *supra*; *Tempest v. Kilner* (1846), 3 C.B. 249; *Walker v. Bartlett* (1856), 18 C.B. 845; 25 L.J. C.P. 263.

the disposal of stocks and shares will, under no circumstances, fall within sec. 17. Likewise, for practical purposes it may be taken as equally certain that such a contract will not require a written note or memorandum under sec. 4. At the end of the last century, shares in an association for the navigation of the river Avon were held to be real estate for purposes of dower;¹ but since that date the courts have been unanimous in deciding that the only interest which a shareholder obtains is a right to participate in the profits of the undertaking.² Again, contracts on the Stock Exchange are so universally completed at the settlement following the account in which they are made, that a special agreement is required if either of the parties desires to fix a different date for performance, and a stipulation that performance should not take place within a year would be rendered very improbable by the fact that the Committee would in that case refuse to recognize the contract.

What is a memorandum with in sec. 4.

Under these circumstances the question of what constitutes a memorandum sufficient to satisfy the requirements of the statute becomes one of merely academic interest. Still, it may not be out of place to devote a few lines to its discussion. The method of transferring securities is quite distinct from the question of what evidence is required of the existence of the contract. But inasmuch as the note or memorandum required by the statute may be made at any time before action, and any written document acknowledging liability and setting out the consideration will be sufficient, if signed by the party to be charged or his duly authorized agent, it is clear that a transfer in writing may serve the same purpose as a note made at the time of the sale. Shares may be either "bearer" shares transferable by delivery of share warrants merely, or they may be deliverable by some written instrument either under seal or under hand only. In the former case, if the shares were to fall within the fourth section there would be nothing subsequent to the date of the contract to remedy

¹ *Buckeridge v. Ingram* (1795), 2 Ves. jun. 652.

² *Bulmer v. Norris* (1860), 30 L.J. C.P. 25.

the want of writing. In the latter case, the instrument, when executed, would no doubt supply the element that was wanting to make the contract actionable, one or both the parties being chargeable, as the transfer deed had been executed by both the parties or by the vendor only.¹ In a large majority of cases the transfer takes place by means of a written instrument of one description or another, and the transfer is executed by both the vendor and the purchaser. Still, cases do undoubtedly occur in which either shares are transferred by delivery only, or the purchaser neglects or refuses to execute the deed of transfer, and they are probably sufficiently numerous to make the question deserving of attention. It might be that, were the question to arise, although no note or memorandum had passed between the actual parties to the final contract, the entries in the respective jobbing-books of their authorized agents would be held to be sufficient to take the case out of the statute, and that such entries would, where necessary, be allowed to be explained by oral evidence as patent ambiguities.

Just as the owner of a field may make a binding contract for the sale of the following season's wheat or hay crop, the prospective owner of shares, or the man whose only prospect of obtaining the shares which he undertakes to deliver is by purchase in the market before the time for completion arrives, may make a perfectly legal contract for their sale.² So, too, a prospective sale may be made of dividends not yet declared, and the contract will be enforced against the vendor.³ And the holder of shares upon which no instalments have been paid may make a valid contract for their

Subjects
of the
contract.

¹ Specific performance of a contract to take shares may be decreed against a purchaser, although he has failed to sign the instrument of transfer; see pp. 93, 152, 218, *post*.

² *Oliverson v. Coles* (1816), 1 Stark, 496; *Hibblewhite v. M'Morine* (1839), 5 M. & W. 462; 8 L.J. Ex. 271; *Mortimer v. McCallan* (1840), 6 M. & W. 58; 9 L.J. Ex. 73; S.C. 7 M. & W. 20; 10 L.J. Ex. 136; *in error*, 9 M. & W. 636; 11 L.J. Ex. 429.

³ *Marten v. Gibbon* (1875), 33 L.T. 561; 24 W.R. 87.

sale, such a contract not being *nudum pactum*, because the possibility that the shares will become valuable is sufficient to constitute an agreement to transfer them a good consideration.¹ But in order that a contract for the purchase of shares in a company may be binding, the company must actually exist, and a purchaser of shares in a proposed undertaking may recover his money from the vendor if the undertaking is abandoned.² Moreover, the purchaser of scrip certificates in a proposed railway company which has not obtained an Act of Parliament is, it seems, not bound, in the absence of special agreement, to take a transfer of the corresponding shares when the Act which incorporates the company has been passed.³

Stock
Exchange
rules and
customs
embodied.

A contract made on the Stock Exchange embraces all the usual characteristics of a legally enforceable agreement, with such additions and alterations as the rules and customs peculiar to the market may introduce into all contracts which are concluded there. For every one who contracts, or authorizes another to contract for him, in a market which is governed by special rules and customs, is taken to be aware of those rules and customs, and either himself to make the contract, or by implication to authorize his agent to make it, with reference to them,⁴ unless they are illegal,

¹ *Cheale v. Kenward* (1858), 3 De G. & J. 27; 27 L.J. Ch. 784.

² *Kempson v. Saunders* (1826), 4 Bing. 5.

³ *Jackson v. Cocker* (1841), 4 Beav. 59. But see p. 219, *post*.

⁴ *Sutton v. Tatham* (1839), 10 A. & E. 27; 8 L.J. Q.B. 210; *Bayliffe v. Butterworth* (1847), 1 Ex. 425; 17 L.J. Ex. 78; *Pollock v. Stables* (1848), 12 Q.B. 765; 17 L.J. Q.B. 352; *Sweeting v. Pearce* (1859), 7 C.B. N.S. 449; 29 L.J. C.P. 265; *Grissell v. Bristowe* (1868), L.R. 3 C.P. 112; 37 L.J. C.P. 89; 17 L.T. 564; 16 W.R. 248; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496; 37 L.J. Ch. 837; 16 W.R. 1078; *Robinson v. Mollett* (1875), L.R. 7 H.L. 802; 44 L.J. C.P. 362; 33 L.T. 544; *Harker v. Edwards* (1887), 57 L.J. Q.B. 147; *Westropp v. Solomon* (1849), 8 C.B. 345; 19 L.J. C.P. 1; *Bayley v. Wilkins* (1849), 7 C.B. 886; 18 L.J. C.P. 273; *Taylor v. Stray* (1857), 2 C.B. N.S. 175; 26 L.J. C.P. 185; affirmed 2 C.B. N.S. 197; 26 L.J. C.P. 287; *Smith v. Lindo* (1859), 5 C.B. N.S. 587; 27 L.J. C.P. 335; *Chapman v. Shepherd* (1867), L.R. 2 C.P. 228; 36 L.J. C.P. 113; 15 L.T. 447; 15 W.R. 314; *Duncan v. Hill* (1873), L.R. 8 Ex. 242; 42 L.J. Ex. 179; 29 L.T. 268; 21 W.R. 797.

as being contrary to public policy,¹ or, as regards customs, are, in the opinion of the Court, unreasonable as against any non-member who was not aware of them, and are not proved to have been brought to his notice.² The latter part of the exception relates to customs only; for, in the case of contracts made on the Stock Exchange, the reasonableness of the printed rules cannot be called in question by the parties, since their attention is called to the rules by a notice on the contract notes, and by accepting the notes they elect to be bound by the rules. But the customs stand on a somewhat different footing. They are not expressly brought to the parties' notice in the ordinary course of business, but a knowledge of them is presumed from the fact that the parties are dealing in the market in which they obtain. So long as they are fair and reasonable a non-member is bound by them, although he was not aware of their existence at the time when he entered into the contract. But if the courts should hold any custom to be unreasonable, a non-member will not be bound by a contract in which it is embodied, unless it can be shown that he had an actual and not merely a constructive knowledge.

In order to establish a particular course of dealing as a custom binding upon those who transact business upon the Stock Exchange, the practice must be shown, not merely to prevail in an office here and there, but to be so universally recognized and acquiesced in that a vast majority of persons who have dealings upon the Stock Exchange cannot fail to be aware of it.³

When
a custom
is legally
binding.

¹ *Harker v. Edwards*, *supra*.

² *Maxted v. Paine* (1869), L.R. 4 Ex., p. 211; *Robinson v. Mollett*, *supra*; *Hamilton v. Young* (1881), 7 L.R. Ir. 289; *Neilson v. James* (1882), 9 Q.B.D. 546; 51 L.J. Q.B. 369; 46 L.T. 791; *Perry v. Barnet* (1885), 15 Q.B.D. 388; 54 L.J. Q.B. 466; 53 L.T. 585; *Seymour v. Bridge* (1885), 14 Q.B.D. 460; 54 L.J. Q.B. 347; *Harker v. Edwards*, *supra*; *Coates v. Pacey* (1892), 8 T.L.R. 351, 474.

³ *Wildy v. Stephenson* (1882), 1 C. & E. 3. See also *Dent v. Nickalls* (1873), 30 L.T. 644; 22 W.R. 218; *Meyer v. Dresser* (1864), 16 C.B. N.S. 646; 33 L.J. C.P. 289; 10 L.T. 612; 12 W.R. 983; *Mackenzie v. Dunlop* (1856), 3 Macq. H.L. 22.

Nature
of custom.

In *Robinson v. Mollett*,¹ Brett, J., thus described the nature and growth of a custom: "Customs of trade, as distinguished from other customs, are generally courses of business invented or relied upon in order to modify or evade some application which has been laid down by the courts, of some rule of law to business, and which application has seemed irksome to some merchants. And when some such course of business is proved to exist in fact, and the binding effect of it is disputed, the question of law seems to be, whether it is in accordance with the fundamental principles of right and wrong. A mercantile custom is hardly ever invoked, but when one of the parties to the dispute has not, in fact, had his attention called to the course of business to be enforced by it; for if his attention had in fact been called to such course of business, his contract would be specifically made in accordance with it, and no proof of it as a custom would be necessary. A stranger to a locality, or trade, or market, is not held to be bound by the custom of such locality, or trade, or market, because he knows the custom, but because he has elected to enter into transactions in a locality, trade, or market, wherein all who are not strangers do know and act upon such custom. When considerable numbers of men of business carry on one side of a particular business, they are apt to set up a custom which acts very much in favour of their side of the business. So long as they do not infringe some fundamental principle of right and wrong they may establish such a custom; but if, on dispute before a legal form, it is found that they are endeavouring to enforce some rule of conduct which is so entirely in favour of their side that it is fundamentally unjust to the other side, the courts have always determined that such a custom, if sought to be enforced against a person in fact ignorant of it, is unreasonable, contrary to law, and void."²

Novation.

In passing from the possession of one holder into that

¹ L.R. 7 H.L., at p. 817.

² As to the admissibility of evidence of a custom, see *Fleet v. Murton* (1871), L.R. 7 Q.B. 126; 41 L.J. Q.B. 49; 26 L.T. 181; 20 W.R. 97.

of another, securities generally become the subject of more than a single contract, the process of novation—or the substitution of a new contract for one already existing—which is comparatively rare in the case of ordinary commercial contracts, being an almost inseparable incident of Stock Exchange transactions.

When tracing the course of a business transaction on the Stock Exchange,¹ it was shown that when a member of the public desires to buy or sell securities, he instructs a broker, and the broker thereupon enters into an agreement with a jobber for the purchase or sale of the amount required. This is a contract which can be enforced by and against the jobber unless, before the time for completion arrives, there is substituted for it another contract between the same or different parties. When the jobber enters into such a contract he usually has no intention of either making or accepting an actual delivery of stock or shares. His intention is to act as a *medium* for bringing together two persons, one of whom desires to sell, and the other to buy, the same securities, and then to drop out and leave these parties to complete the transaction. And what he in fact undertakes—and by the custom of the Stock Exchange is entitled—to do is, either himself to take or give delivery of the securities on the following account day, or to find some one who will do so in his place.² In furtherance of this object, when ticket-day arrives, the jobber by means of a ticket passes to the vendor the name of the purchaser who is to take his place by accepting a transfer of and paying for the shares. The name supplied by the jobber must be that of a person who is competent to contract and has given authority for the use of his name. “The jobber’s contract, therefore,” said Lord Chelmsford, in *Nickalls v. Merry*,³ “is of this description: It is at first a temporary and conditional contract, but it becomes

¹ See Chapter IV.

² *Bowing v. Shepherd* (1871), L.R. 6 Q.B. 309; 40 L.J. Q.B. 129; 24 L.T. 721; 19 W.R. 832.

³ (1875), L.R. 7 H.L., at p. 514. See too the judgment of Mellish, L.J., in the same case in the Court of Appeal, L.R. 7 Ch., at p. 758.

absolute upon his failure to furnish by name-day the name of a person capable and willing to become the transferee of the shares, so that the seller by executing a transfer may make with him a new contract in substitution of the original one with the jobber. . . . The jobber is not required to give the name of a person merely, but to give the name of a person *as the purchaser*, meaning, of course, a person capable of becoming the purchaser, whose contract will be binding and enforceable against him."

Although the new purchaser must be capable and willing to contract, it is not apparently essential to the validity of the contract that he should be a person of substance capable of performing the contract.¹ As soon as the name is passed to and accepted by the vendor, and the transfer is accepted and the securities paid for by the purchaser, privity of contract is established between these parties,² the liability of the purchaser under the new contract is substituted for that of the jobber under the original one, and the jobber is discharged. "It may be well to repeat," said Lord Cairns, in *Coles v. Bristowe*,³ "in order to prevent misapprehension, that in our opinion the liability of the defendants" (*i.e.* the jobbers) "continued entire and unbroken until there was an acceptance by the plaintiff, by the preparation and execution of the transfers, of the names sent in by the defendants as purchasers, and until there was an acceptance of the shares by the purchasers through the delivery to their brokers of, and payment by their brokers for, the transfers and certificates of the shares. It is difficult to see how this liability can continue after the transfer, as in the present case, of the shares to other persons."

The formation of this new contract is complete without

¹ *Maxted v. Paine* (1869), L.R. 4 Ex. 203; 38 L.J. Ex. 129; (1871), L.R. 6 Ex. 132; 40 L.J. Ex. 57; 24 L.T. 149; 19 W.R. 527; *Merry v. Nickalls* (1872), L.R. 7 Ch. 733; 26 L.T. 496; 20 W.R. 531; *Nickalls v. Merry* (1875), L.R. 7 H.L. 530; 45 L.J. Ch. 575; 32 L.T. 623; 23 W.R. 663.

² *Shepherd v. Murphy* (1868), 16 W.R. 948.

³ L.R. 4 Ch., at p. 12.

the execution of the transfer by the purchaser;¹ for the purchaser may become equitable owner where, through no fault of his own, he is prevented from acquiring legal ownership, as, for instance, by the winding-up of the company.² *A fortiori*, registration of the purchaser's name is not necessary, the vendor while on the books of the company holding as trustee for the purchaser.³ And even should the directors refuse to recognize the transfer, the contract is still complete as between vendor and purchaser.⁴

¹ *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496; 37 L.J. Ch. 837; 16 W.R. 1078; *Hawkins v. Maltby* (1869), L.R. 4 Ch. 200; 38 L.J. Ch. 313; 20 L.T. 335; 17 W.R. 557; *Crabb v. Miller* (1871), 24 L.T. 892; 19 W.R. 882; *Fenwick v. Buck* (1871), 24 L.T. 274; 19 W.R. 597.

² *Taylor v. Stray* (1857), 2 C.B. N.S. 175, 197; 26 L.J. C.P. 185, 287; *Stray v. Russell* (1859), 1 El. & El. 888; 29 L.J. Q.B. 115; 1 L.T. 162, 443; 8 W.R. 240; *Chapman v. Shepherd* (1867), L.R. 2 C.P. 228; 36 L.J. C.P. 113; 15 L.T. 477; 15 W.R. 314; *Biederman v. Stone* (1867), L.R. 2 C.P. 504; 36 L.J. C.P. 198; 16 L.T. 415.

³ *Ecans v. Wood* (1867), L.R. 5 Eq. 9; 37 L.J. Ch. 159; 17 L.T. 190; 16 W.R. 67; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496; 37 L.J. Ch. 837; 16 W.R. 1078; *Castellan v. Hobson* (1870), L.R. 10 Eq. 47; 39 L.J. Ch. 490; 22 L.T. 575; 18 W.R. 731; *Fenwick v. Buck* (1871), 24 L.T. 274; 19 W.R. 597.

⁴ *Taylor v. Stray* (1857), C.B. N.S. 175, 197; 26 L.J. C.P. 185, 287; *Stray v. Russell* (1859), 1 El. & El. 888; 29 L.J. Q.B. 115; 1 L.T. 162, 443; 8 W.R. 240.

CHAPTER VII.

RIGHTS OF THE PARTIES UNDER THE CONTRACT.

Section I. Broker and Principal—Sec. II. Broker and Jobber—Sec. III. Jobber and Principal—Sec. IV. Vendor and Purchaser.

SECTION I. BROKER AND PRINCIPAL.

Broker's
authority.
Contract
of agency.

THE employment of a broker by an intending purchaser or vendor of securities creates a contract of agency. To this contract the general law of agency applies, except in so far as it is modified by the rules and customs of the Stock Exchange.¹

The contract between broker and principal is concluded as soon as the principal has given his instructions to buy or sell, and the broker has signified his acceptance by executing them, or such part of them as he can execute where he is unable to carry out the whole. For an offer to buy or sell a certain amount of shares or stock at a price named is binding upon the broker as to any part thereof, and is therefore also binding upon the principal.²

Ambiguous
instructions.

The instructions should be clear and unambiguous, for should they be capable of more than a single construction, and should the broker in consequence honestly act contrary to the intention of his principal, the latter cannot subsequently repudiate the contract on the ground that it is not the contract which he intended should be made. "Now, it appears to me," said Lord Chelmsford, in *Ireland v. Livingston*,³ "that if a principal gives an order to an agent

¹ *Maxted v. Paine* (1869), L.R. 4 Ex., at p. 211.

² Rules 80, 91, 113.

³ (1872), L.R. 5 H.L., at p. 416; and see *Tallentire v. Ayre* (1884), 1 T.L.R. 143; *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701.

in such uncertain terms as to be susceptible of two different meanings, and the agent *bonâ fide* adopts one of them and acts upon it, it is not competent to the principal to repudiate the act as unauthorized because he meant the order to be read in the other sense of which it is equally capable. It is a fair answer to such an attempt to disown the agent's authority to tell the principal that the departure from his intention was occasioned by his own fault, and that he should have given his order in clear and unambiguous terms." So that where a principal instructs his broker to purchase a particular security, and that security not being procurable in the market, the broker purchases something which is generally dealt in in substitution for it, the principal may be compelled to take what the broker has bought, although it is not what he intended to order.

In *Mitchell v. Newhall*¹ the defendant instructed the plaintiff to purchase for him fifty shares in a foreign railway company. There were at the moment no shares in the market, as the foreign Government had not granted a concession. But according to the evidence of members of the Stock Exchange letters of allotment were commonly bought and sold as shares. The plaintiff bought a letter of allotment for fifty shares, and it was held that there was evidence upon which a jury was justified in coming to the conclusion that this was a good execution of the order.

Purchase of allotment-letter when a good execution of order for shares.

The principal may revoke the authority which he has given to his broker to contract on his behalf, at any time before the broker has done some act towards executing the instructions which he has received. But if not countermanded the authority will, it seems, expire automatically on the following settling-day; for since that is the usual time for the completion of contracts, it would probably, in the absence of any special agreement, be held to be a reasonable time for the

Revocation of authority.

¹ (1846), 15 M. & W. 308; 15 L.J. Ex. 292. See too *Lamert v. Heath* (1846), 15 M. & W. 486; 15 L.J. Ex. 297; *Tempest v. Kilner* (1846), 3 C.B. 249; *Morrice v. Hunter* (1866), 14 L.T. 897.

execution of orders.¹ But when once, in compliance with his principal's instructions, the broker has placed himself in such a position that he cannot retreat from it without loss to himself, the principal is not at liberty to withdraw the authority which he has given, nor to demand the return of his money where he has already paid it to the broker.² In *Fletcher v. Marshall*,³ where a broker was instructed by the plaintiff to buy scrip certificates of shares in a new railway company, and, owing to a delay on the part of the company in issuing the certificates, the broker was unable to deliver them on demand fourteen days after the next settling-day, it was held that a reasonable time for delivery had elapsed, and that the plaintiff was entitled to demand his money from the broker, although the latter had used reasonable endeavours to obtain delivery of the certificates, and would by the rules of the Exchange be liable to the jobber from whom he had bought. The broker would probably now protect himself against a similar loss by stating in the bought note that the purchase was for delivery and not for a fixed date, though a similar verdict would scarcely be likely to be given again. Indeed, in the following year it was decided in a very similar case,⁴ that where the scrip had been called in by the directors between the time of purchase and the time when it should have been delivered, the non-performance of the contract at the agreed time did not furnish a reason for repudiation of his liability by the principal, since it was due to circumstances over which neither party had any control; and that the contract was for delivery of scrip on the 29th of August, if not then called in, otherwise for share certificates as soon as they should be issued. And in *Fenwick v. Buck*⁵ the purchaser of shares

¹ See *Lawford v. Harris* (1896), 12 T.L.R. 275, where it was held that if a principal gives instructions to sell and fixes a limit for such sale, such limit does not hold good beyond the end of the current account.

² *Read v. Anderson* (1884), 13 Q.B.D. 779; L.J. Q.B. 532; 51 L.T. 55; 32 W.R. 950.

³ (1846), 15 M. & W. 755.

⁴ *M'Ewen v. Woods* (1847), 11 Q.B. 13.

⁵ (1871), 24 L.T. 274; 19 W.R. 597.

was not permitted to repudiate his liability merely because the transfer was not handed to him for execution until fourteen days after the settling-day for which the shares were bought.

When a principal instructs his broker to enter into contracts of purchase and sale on his behalf, it is of course always open to him to limit, in such manner as he may think fit, the broker's authority to bind him, provided that the broker will assent to his terms. "If the principal," said Cleasby, B., in the second action of *Maxted v. Paine*, "forbids the broker to bargain for him according to the peculiar usages of the Stock Exchange, and limits his authority to specified contracts, the broker could not bind him to a contract to be performed according to those usages."¹ The general rule of the law of agency is, that if an agent has authority to contract, even though such authority is limited, a party who, without notice of the existence of any limitation, enters into a contract with the agent as agent within the apparent scope of the agency, is not bound to inquire as to the extent of the authority, but may recover from the principal the full value under the contract; but that if the contract is entirely unauthorized by the professed principal, the other contracting party is obliged to look for his remedy to the person who made the contract alone, although the latter held himself out as an agent.² For instance, if a broker receives securities with authority to raise money upon them to a limited amount, a person who, without notice that any limitation has been imposed, advances a larger sum than that authorized to be borrowed, is entitled to hold the securities as against the principal, until the entire sum raised by the agent has been repaid;³ but if the securities

Limits of
authority.
(i.) Ex-
press.

¹ *Maxted v. Paine* (1869), L.R. 4 Ex., at p. 211.

² See *Brocklesby v. Temperance Permanent Building Society* [1895], A.C. 173; 64 L.J. Ch. 433; 72 L.T. 477; 43 W.R. 606. See also *Robinson v. Montgomeryshire Brewery Co.* [1896], 2 Ch. 841; 65 L.J. Ch. 915.

³ *Mocatta v. Bell* (1853), 24 Beav. 585; 27 L.J. Ch. 237; *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140; *Brocklesby v. Temperance Permanent Building Society*, *supra*.

were deposited merely for the purpose of safe custody, any one who makes an advance to the broker and receives them as security, is not entitled to hold them against the principal, unless they are negotiable instruments.¹

Where, therefore, a principal imposes a limit upon his broker's authority to contract on his behalf, and the broker exceeds that limit, the principal will, it seems, be liable to the full extent of the contract, and the effect of his arrangement with his broker will be that he will be entitled to have recourse to the broker for any loss or liability to which he is subjected in excess of his instructions;² while if the broker contracts on behalf of a principal who has not authorized him to contract at all, he will be personally liable for the fulfilment of the contract, on the ground that he impliedly warranted that he had the authority which he held himself out as having when he entered into the contract.³ But the question is not likely to become important, as it is improbable that members of the Stock Exchange will, unless in very exceptional cases, consent to depart from the ordinary course of business, or to assume a heavier responsibility towards their fellow-members than their principals are under to them.

(ii.) Implied.

If a principal imposes no restrictions upon his broker's authority to contract, the law implies an authority to make the contract subject to all such rules and regulations as are in force at the date of the contract,⁴ and to such customs as are reasonable.⁵ "For one who employs a broker to transact business for him upon the Stock Exchange, or any other general market, impliedly authorizes him to deal according to the general and known usages and customs of the market,

¹ See p. 132, *post*.

² See the judgment in *Crabb v. Miller* (1871), 24 L.T. 219, and *Coles v. Bristowe* (1868), L.R. 4 Ch., at p. 14.

³ *Collen v. Wright* (1857), 8 E. & B. 647; *Merry v. Nickalls* (1872), L.R. 7 Ch., at p. 756; *Ex parte Panmure* (1883), 24 Ch. D. 367; 53 L.J. Ch. 57; 50 L.T. 38; 32 W.R. 236.

⁴ But not to rules or resolutions of the Committee, which are passed subsequently to the making of the contract: *Westropp v. Solomon* (1849), 8 C.B. 345; 19 L.J. C.P. 1.

⁵ See p. 88, *ante*, and the cases collected in note 4.

although he may not himself be aware of their existence.¹ But there is no implied authority to the broker to contract in accordance with a custom which is unreasonable, and the principal will not be bound by such a contract unless he is proved by the broker to have been aware of the custom.² Nor is there any implied authority to conduct the purchases and sales otherwise than in accordance with the usual course of business, although the broker in so doing is acting *bonâ fide* and with the intention of benefiting his principal. In order to bind the principal by a course of dealing which is unusual, there must be an express authority to the broker so to deal.³

This implied authority extends to the doing of all acts which are necessary to the completion of the contract. The purchaser's broker is therefore justified in repaying to the vendor a call upon shares which the latter has been compelled to pay before he could make a transfer of the shares.⁴ According to the case of *McDevitt v. Connolly*,⁵ decided by the Court of Appeal in Ireland, the vendor's broker is not authorized to receive the purchase-money on the vendor's behalf, without either an express authority, or an implied authority which may be presumed from the vendor's conduct, as, for instance, where he hands to his broker share certificates or a transfer. But since, in the ordinary course of business, the principal invariably does place the certificates and transfers in his broker's hands, and the latter thereby obtains that authority without which the settlement of the transactions that have taken place during an account would be impossible, the case loses much of its importance.

Extent of
the implied
authority.

¹ *Grissell v. Bristowe* (1868), L.R. 3 C.P. 112; 37 L.J. C.P. 89; 17 L.T. 564; 16 W.R. 428; and see *Robinson v. Mollett* (1875), L.R. 7 H.L. 802, 817, 836.

² See cases collected in note 2, p. 89.

³ *Wiltshire v. Sims* (1808), 1 Camp. 258. See also *Brown v. Boorman* (1844), 1 Cl. & F. 1. The principal may, however, subsequently ratify a course of dealing which is unusual.

⁴ *Bayley v. Wilkins* (1849), 7 C.B. 886; 18 L.J. C.P. 273.

⁵ (1885), 15 L.R. Ir. 500.

Duties
of broker.

It is the duty of a broker towards his principal to loyally use his best endeavours to forward the principal's interest, and the courts have always strongly discountenanced and disapproved anything which would tend to militate against the performance of this duty.

(i.) To disclose the fact where he is acting for vendor and purchaser at the same time.

It is unusual on the London Stock Exchange for two brokers to transact business without the intervention of a jobber, except, of course, in transactions in which the same broker is acting for two principals, one of whom wishes to sell and the other to buy the same security. The broker is in such a case presumably justified to bring his principals together without the jobber's intervention. He owes, however, a "paramount duty" to both seller and buyer to disclose the fact that he is acting for both parties. For while his duty to the vendor is to sell at the highest price obtainable, his duty to the purchaser equally is to buy at the lowest, and it is for the persons most concerned to consider whether they will consent to combine in the hands of a single person interests which are diametrically opposed.¹

(ii.) Broker may not sell to or buy from principal.

Similarly, on the ground of a probable conflict of interests, a broker who is instructed to purchase or sell securities is not permitted to sell to or purchase from his principal² unless the transaction is perfectly *bonâ fide*, and the principal is fully informed as to the broker's intention.³ For "in matters touching the agency, agents cannot act so as to bind their principals where they have an adverse interest in themselves. This rule is founded upon the plain and obvious consideration that the principal bargains in the employment for the disinterested skill, diligence, and zeal

¹ *McDevitt v. Conolly* (1885), 15 L.R. Ir. 500.

² *Ex parte Dyster* (1816), 1 Mer. 155; 2 Rose, 349; *Rothschild v. Brookman* (1829), 2 Dow. & Cl. 188; 3 Sim. 153; 5 Bli. N.S. 165; *Gillett v. Peppercorne* (1839), 3 Beav. 78; *Bank of Bengal v. Macleod* (1849), 7 Moo. P.C.C. 35; *Kimber v. Barber* (1872), L.R. 8 Ch. 56; 27 L.T. 526; 21 W.R. 65; *Robinson v. Mollett* (1875), L.R. 7 H.L. 802; 44 L.J. C.P. 362; 33 L.T. 544.

³ *Dunne v. English* (1874), L.R. 18 Eq. 524; 31 L.T. 75; *Robinson v. Mollett* (1875), L.R. 7 H.L., pp. 815, 816.

of the agent for his exclusive benefit.”¹ Therefore, in order that the principal may be bound by such a transaction, it is necessary that the broker shall show, not merely that he acted in perfect good faith, but also that he made a full disclosure to his principal of the exact nature of his interest; for it is not sufficient that he should inform his principal that he has an interest, or that he should make statements calculated to put the principal upon inquiry.² If he acts without making the necessary disclosure the transaction will be set aside, although several years have passed since it took place,³ and although there is no trace of anything but the most complete *bona fides* on the part of the broker.⁴ “The principle is this,” said Lord Wynford, in *Rothschild v. Brookman*,⁵ “that no man ought to be trusted in a situation that gives him the opportunity of taking advantage of the person who has reposed confidence in him. If such a man, in such a situation, performs any acts which are afterwards made the subject of legal inquiry, he must suffer the consequences. In this case the appellant is bound to show, by clear evidence, that the respondent knew at the time the real nature of the transactions, and with full knowledge of their nature assented to them. . . . I think it fit that your Lordships should say, in language which cannot be misunderstood, that in these transactions of trust and confidence there must be, on the part of the person trusted, that most marked integrity, that *uberrima fides*, which cannot leave a doubt as to the fairness of the transaction.”

When such a charge is made against a broker the burden of proof will rest upon him and not upon his principal. The delivery of bought and sold notes in such a case is an untrue representation upon which an action may successfully be

¹ Storey on Agency, sec. 210.

² *Dunne v. English*, *supra*.

³ *Gillett v. Peppercorne* (1839), 3 Beav. 78.

⁴ *Rothschild v. Brookman* (1829), 2 Dow. & Cl. 188; 5 Bli. N.S. 165; 3 Sim. 153.

⁵ 2 Dow. & Cl., pp. 197, 198.

maintained,¹ the principal having the choice of one of two courses—either to adopt the contract and claim any profit which the broker may have made out of it, or to repudiate the contract and claim the return of his money.²

In these cases it is immaterial whether the transaction is fraudulent or perfectly innocent. In either case the principal is entitled to be replaced in his former position, if that be possible, or—if circumstances have subsequently arisen which render such a course impossible—to be placed in as good a position as he formerly held, so far as the payment of damages can have that effect.³

It appears, however, that if a principal refuses to accept delivery of securities which he has instructed his broker to purchase, and in respect of which the broker has entered into binding contracts on the Stock Exchange, the broker is not compelled to sell them out against his principal, but may take them over personally after having had a fair price fixed, and may charge his principal with any loss caused by a fall in value.⁴ In fact the tendency of the courts in recent years seems to have been to somewhat relax the former stringency of the rule which prohibited a broker from acting as principal, and to hold that he is justified in so acting if he can show that he was thereby doing his best to promote the interests of his employer.

Apparently, in the case last referred to, the shares purchased were shares for which there was not a ready sale, and the question arises whether a broker would be held to be justified in thus taking over securities purchased for his principal if there was a free market in them. The question does not at present appear to have been decided, and in the absence of any reported authority on the point, brokers will probably be pursuing the safer course if in such cases they dispose of the securities by a sale in the open market.

¹ *Wilson v. Short* (1847), 6 Hare, 366.

² See the notes to *Fox v. Mackreth*, 1 L.C. Eq. (6th edit.), p. 141.

³ As to the measure of damages in these cases, see p. 215, *post*.

⁴ *Waller v. King*, the *Times*, March 10, 1897. The burden of proving that the price was a fair one will, of course, rest on the broker.

In whatever way the law on the questions discussed above may be finally decided, it is clear that the mere fact that a broker, who has received at the same time two or more separate orders from different principals for the same security, has entered into a single contract with a dealer for the entire amount, will not render the transaction unenforceable against the principals.¹

If a broker receives instructions from his principal to buy at a specified price, the meaning is that he is to buy at the best price obtainable for the principal's advantage not exceeding the price named. Therefore the broker is not justified in buying at a lower price and re-selling to the principal at the price named, even though he does not charge commission.² And, *vice versâ*, an order to sell out at a specified price must be taken to mean that the broker is not to sell below that price.

It is the broker's duty, when he enters into a contract on behalf of his principal, to make a valid and binding contract and not one that is void and unenforceable. "There was," said Brett, L.J., in *Neilson v. James*,³ "a well-known duty which the defendant (*i.e.* the broker) undertook to perform, namely, that he would use reasonable efforts to find a purchaser of such shares on the Stock Exchange, and that he would make a contract with him in such form as would bind the purchaser to take the shares." And, therefore, where it has become customary upon the Stock Exchange to disregard the provisions of an Act of Parliament, a contract made in accordance with such a custom cannot be enforced against the principal unless either he was aware of the custom,⁴ or has become equitable owner of the shares by not repudiating the contract within a reasonable time.⁵

¹ *Ex parte Rogers* (1880), 15 Ch. D. 207; 43 L.T. 163; 29 W.R. 29.

² *Thompson v. Meade* (1891), 7 T.L.R. 698.

³ (1882), 9 Q.B.D., at p. 552.

⁴ See p. 89, *ante*.

⁵ *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701.

And *primâ facie* it will be presumed that the authority given to the broker is to make a valid and enforceable contract.¹

No duty to enter contracts in day-book.

But it is no part of the broker's duty to enter in his day-book the contracts which he makes. And therefore, where the broker is dead, entries in the day-book cannot be used as evidence against his principal, for such entries are not statements necessarily adverse to the pecuniary interest of the broker, since it depends upon the turn of the market whether they are in his favour or not.²

(iv.) To use due diligence.

It is the broker's duty to use due diligence in the conduct of his principal's business. If, for instance, he receives instructions to apply for shares in a company which is in process of formation, and the application-money is paid to him, it is his duty to pay it directly to the company's brokers, and if he pays the money into the hands of third persons he will be personally liable for its return in case the directors do not proceed to allotment.³

(a) No duty to examine purchaser's credit.

It has at times been suggested by the courts that it is the duty of a broker to examine into the credit and responsibility of his principal's co-contractor.⁴ But this would involve an expenditure of time and trouble out of all proportion to the amount of the broker's remuneration, and can scarcely be held to be the law. Indeed, since the decision in *Nickalls v. Merry*, in the House of Lords, that the jobber's liability continues until he has passed the name of a competent party, the question has become of minor importance.

(b) To procure delivery of securities or purchase-money.

The broker is also under an obligation to take steps to procure delivery of the securities which he has purchased on the principal's behalf, or to collect the purchase-money where he has sold, and in default of so doing he will be liable to an action. But it may always be that it will be more in the principal's interest to allow some delay in

¹ *Coates v. Pacey* (1892), 8 T.L.R. 351, 474.

² *Massey v. Allen* (1879), 13 Ch. D. 558; 49 L.J. Ch. 76; 41 L.T. 788; 28 W.R. 212. But see p. 210, *post*.

³ *Leveson Gower v. May* (1891), 7 T.L.R. 696.

⁴ See *Maxted v. Paine* (1871), L.R. 6 Ex. 132; 40 L.J. Ex. 57; 24 L.T. 149; 19 W.R. 527.

completion than to press for an immediate settlement, and where this is the case, the broker must, in the absence of express instructions, exercise his discretion as to the length of the delay.

It is further the broker's duty to hand over to his principal the money or securities as soon as he has received them, or if, in the case of securities, this cannot be immediately done, to appropriate them to the principal. And any unnecessary delay on the part of the broker in handing them over will give to his principal a right of action against him. But the principal is not entitled, in the absence of a special contract, to claim delivery of certificates or transfer contemporaneously with the payment of his money, for this would necessitate the broker's paying for the securities with his own money, a thing which he is not under any obligation to do.¹

It is the duty of the purchaser's broker to forward share certificates together with the transfers to the company's offices for registration. But there is no undertaking on his part that they shall be registered, and he is under no liability either for delay in registration, or for non-registration, the principal's only remedy apparently being an action for damages against the company if the directors have exceeded their powers in refusing to register.

When, in compliance with the instructions of his principal, a broker has contracted upon the Stock Exchange in accordance with the lawful and reasonable rules and usages of that market, he is entitled to be indemnified by the principal against any loss or liability² which he has incurred,

¹ *Stock and Share Auction and Advance Co. v. Galmoye* (1887), 3 T.L.R. 808.

² It is not necessary that there should have been an actual loss before the broker can claim an indemnity, a prospective loss is sufficient; see *Lacey v. Hill, Crowley's Claim* (1874), L.R. 18 Eq. 182; 43 L.J. Ch. 551; 30 L.T. 484; 22 W.R. 586. Where the broker is entitled to indemnity against liability from the estate of a deceased or insolvent principal, he is also entitled to have a sufficient sum set apart out of the estate to meet that liability. *Ibid.*

(c) To deliver securities or money on receipt.

(d) To take steps to obtain registration.

Rights of broker.
(1.) Right to indemnity.

or may incur in the ordinary course of business,¹ provided such loss or liability is not occasioned by his own default. And so invariable is the application of this principle that where the money which the broker is seeking to recover from his principal has been paid under compulsion of a decision of the Committee of the Stock Exchange, which is wrong in law, the broker will apparently still be entitled to be indemnified.¹ And, formerly, even where a broker could not recover commission or brokerage owing to the fact that he had not been licensed in accordance with the provisions of the statute, 6 Anne, c. 16, he might still recover money which he had paid at the implied request of his principal, and which was not shown to have been paid in his character of broker.²

Child v. Morley,³ decided in the year 1800, was the first case in which the question came before the courts. Owing to the form in which the action was brought, it was held in that case that the broker could not recover. But the Court was strongly of opinion that he ought to have some legal remedy, and in the subsequent case of *Young v. Cole*,⁴ *Child v. Morley* was mentioned as laying down the principle that the broker was entitled to an indemnity. In *Young v. Cole* a broker had sold, on behalf of his principal, certain Guatamala bonds, and had paid the purchase-money to the principal. On the bonds subsequently proving to be unmarketable, because unstamped, the broker took them back and reimbursed the purchaser, and it was held that he was entitled to recover from his principal the purchase-money which he had paid to him. And in a case in which the holder of London and North Western Railway four per cent. preference stock instructed his broker to sell the stock, and sent him transfers purporting to be duly executed,

(a) Where bonds unstamped or transfers of stock forged.

¹ *Westropp v. Solomon* (1849), 8 C.B. 345; 19 L.J. C.P. 1.

² *Pidgeon v. Burslem* (1840), 3 Ex. 465; 18 L.J. Ex. 193; *Jessopp v. Lutwyche* (1854) 10 Ex. 614; 24 L.J. Ex. 65; *Smith v. Lindo* (1838), 5 C.B. N.S. 587; 27 L.J. C.P. 335.

³ 8 T.R. 610.

⁴ (1837), 3 Bing. N.C. 724.

which transfers were subsequently proved to be forged, the broker who had sold the stock and paid the price to his principal, was held to be entitled to an indemnity from the principal, when, in obedience to a resolution of the Committee of the Stock Exchange, he had refunded the amount to the purchaser.¹

Where, again, a shareholder erroneously instructed his broker to sell for him two hundred and fifty shares in a company in which his entire holding consisted of fifty shares, with the result that he was unable to deliver two hundred of the shares, and the broker was compelled to pay to the purchaser the difference between the contract price of such shares and the price at which the purchaser was able to buy them in the market at the settlement, it was held that the shareholder was liable to reimburse the broker.² And, similarly, where the purchaser fails to pay for securities which his broker has bought by his instructions, and the vendor having re-sold, the purchaser's broker is compelled to pay the difference between the contract price and the market price at the time of the re-sale, the broker can claim an indemnity.³

Where a principal instructs his broker to purchase a particular security, and the broker purchases something which generally passes under the same denomination, though not actually the thing that has been ordered, the principal will be compelled to indemnify him, if it appears that, as a matter of fact, the principal obtains in substance that for which he bargained.⁴ But this will not be the case if the broker has bought something essentially different from that which was ordered—for instance, unregistered instead of registered shares.⁵

(b) Where vendor fails to deliver.

(c) Where purchaser fails to pay.

(d) Where instructions substantially obeyed.

¹ *Smith v. Reynolds* (1892), 66 L.T. 808.

² *Sutton v. Tatham* (1839), 10 A. & E. 27; 8 L.J. Q.B. 210. See, too, *Bayliffe v. Butterworth* (1847), 1 Ex. 425; 17 L.J. Ex. 78.

³ *Pollock v. Stables* (1848), 12 Q.B. 765; 17 L.J. Q.B. 352.

⁴ *Mitchell v. Neuchall* (1846), 15 M. & W. 308; 15 L.J. Ex. 292; *Lamert v. Heath* (1846), 15 M. & W. 486; 15 L.J. Ex. 297; *Tempest v. Kilner* (1846), 3 C.B. 249.

⁵ *Bowlby v. Bell* (1846), 3 C.B. 284; and see p. 112, *post*. See also *Ex parte Panmiure* (1883), 24 Ch. D. 367; 53 L.J. Ch. 57; 50 L.T. 38; 32 W.R. 236.

(e) Where a call is payable before shares can be transferred.

A broker who has been instructed to purchase shares which are not fully paid up, has implied authority to repay to the vendor a call on the shares which the latter has been compelled to pay before he could transfer them; and the purchaser is bound to indemnify his broker, although at the time when the purchase was made the call was not payable, and neither the broker nor the principal knew that the call had been made. The principal, however, must be taken to know that at some future time he will be obliged to pay calls, and by implication he gives to his broker authority to do all that is necessary to complete the contract.¹

(f) Where company wound up before transfer completed.

In *Chapman v. Shepherd*,² a contract for the purchase of shares in a joint-stock company had been entered into, but not completed by transfer, before the presentation of a petition for winding up the company under the Companies Act of 1862. It was there held that section 153 of that Act did not render transfers of shares under such circumstances void, but left it to the discretion of the Court to allow them to operate, and that the purchaser's broker, who had paid for the shares, was entitled to recover from the purchaser the money which he had so paid. *Biederman v. Stone*³ was another case under the same Act. Section 151 provided that in case of a voluntary winding-up of a company, the company should, from the date of the commencement of such winding-up, cease to carry on its business, and that all transfers taking place after that date should be void, with the exception of transfers made up to, or with the sanction of, the liquidators. The plaintiff, a broker and member of the Stock Exchange, sold for the defendant thirty shares in Overend, Gurney & Co., after that company had commenced to wind up voluntarily. The sanction of the liquidators to the transfer of the shares had not been obtained, and the defendant on that account refused to execute a transfer. The broker was in consequence compelled to

¹ *Bayley v. Wilkins* (1849), 7 C.B. 886; 18 L.J. C.P. 273.

² (1887), L.R. 2 C.P. 228; 36 L.J. C.P. 113; 15 L.T. 447; 15 W.R. 314.

³ (1867), L.R. 2 C.P. 504; 36 L.J. C.P. 198; 16 L.T. 415.

furnish to the purchaser other shares, for which he paid an advanced price. It was held that as the statute made the execution of the transfer, without the sanction of the liquidators, not illegal, but merely void, the action was maintainable against the defendant, for he was bound to execute the transfer *quantum valeat*.¹

Again, where the purchasers of shares forwarded to their brokers the name of an infant as transferee, and the company being subsequently wound up, the infant's name was removed from the list of contributories, and the names of the transferors substituted, it was held that the purchasers were liable to indemnify their brokers who had, by a resolution of the Committee of the Stock Exchange, been compelled to reimburse the transferors.²

In *Marten v. Gibbon*³ the defendant instructed his brokers to sell the prospective dividends on certain railway stock. The brokers accordingly sold the dividends, calculating them at a certain rate per cent. When the dividends were declared they amounted to a higher rate than that at which they had been sold. The brokers paid the difference to the purchasers, and were held to be entitled to recover the amount from the vendor.

Where a broker, being instructed to buy shares of a peculiar description, disregards the special provisions which the Legislature has thought fit to impose upon the transfer of such shares, the principal will nevertheless be liable to indemnify the broker if it appears that as a matter of fact it was the intention of the principal to authorize the making of the contract in that form.⁴ And even though it was not the principal's intention to authorize his broker to enter into such a contract, if his instructions were so ambiguous that the broker may honestly have thought that that was his

(g) Where transfer taken in name of infant.

(h) Where sale of prospective dividends.

(i) Where an Act of Parliament is not complied with.

¹ See also *Taylor v. Stray* (1857), 2 C.B. N.S. 175, 197; 26 L.J. C.P. 185, 287; *Stray v. Russell* (1859), 1 El. & El. 888; 29 L.J. Q.B. 115; 1 L.T. 162, 443; 8 W.R. 240; *Robins v. Edwards* (1867), 15 W.R. 1065.

² *Peppercorne v. Clench* (1872), 26 L.T. 656.

³ (1875), 33 L.T. 561; 24 W.R. 87.

⁴ *Seymour v. Bridge* (1885), 14 Q.B.D. 460; 54 L.J. Q.B. 347.

intention, he will become equitable owner of the shares, and will be compelled to repay to the broker the amount of the purchase-money.¹

(j) Where broker becomes insolvent.

A purchaser of shares, whose broker makes default before the settling-day, is entitled to have his contract completed by the jobber, if he is not himself in default to the defaulting broker. But if the purchaser consents to the closing of his account while it still shows a balance in favour of the jobber, he becomes liable to indemnify the broker to the amount which the latter has been compelled to pay to the jobber in consequence of the closing of such account.²

(k) Where the business is speculative.

Where the business transacted is purely of a speculative character, and there is no intention on the part of the principal to hold the securities purchased as an investment, but the intention is merely to hold until there has been a rise in the market and then to sell again, the broker is nevertheless entitled to be indemnified.³

No indemnity.

The broker, however, cannot successfully claim to be indemnified by his principal where the expense to which he has been put is due to his own default.

(a) Where gaming or illegal transactions.

Although up to the year 1892 it was considered that a broker who engaged in wagering transactions on behalf of a principal merely in the capacity of agent, might, in spite of 8 & 9 Vict. c. 109, s. 18, claim an indemnity from his principal for any loss which he incurred, the Gaming Act of that year specifically enacted that a broker should not be entitled to maintain an action against his principal for any

¹ *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701. This case and *Seymour v. Bridge* are exceptions to the general rule that there is no indemnity under such circumstances; see p. 111, *infra*.

² *Hartas v. Ribbons* (1889), 22 Q.B.D. 254; 58 L.J. Q.B. 187; 37 W.R. 278. But see *Duncan v. Hill*, p. 112, *post*.

³ *Thacker v. Hardy* (1878), 4 Q.B.D. 685; 48 L.J. Q.B. 289; 39 L.T. 595; 27 W.R. 158; *Forget v. Ostigny* [1895], A.C. 318; 64 L.J. P.C. 62; 72 L.T. 399; 43 W.R. 590; and see too *Cooper v. Neil* (1878), 27 W.R., p. 159 n., and the cases collected on pp. 173 *et seq*.

indemnity, commission, or other debt due to him as the result of a gaming transaction. So, too, where the transactions in respect of which the broker is seeking to recover are illegal, the broker is unable to maintain an action for indemnity or commission.¹

If the broker has made a contract for his principal subject to customs which are illegal, he cannot claim to be indemnified;² nor, similarly, can he maintain any claim where such customs are unreasonable as against persons who are not aware of them, and the principal is not proved to have had express notice of them.³ The principal may, however, in the latter case, by his subsequent conduct, waive his right to rely on the protection thus afforded.⁴ Moreover, where the rules under which the broker's liability has been incurred have been passed by the Committee of the Stock Exchange subsequently to the date of the contract, and the principal cannot therefore be presumed to have contracted with reference to them, he will, at the most, be compelled to repay to the broker the amount which he received from him in case of a sale.⁵

Apart from the question of negligence on the part of the broker, it seems that where a broker is instructed by telegram, and a mistake is made in transmitting the message, a promise to indemnify the broker for loss so caused will not be implied, unless, perhaps, the mistake is due to negligence on the part of the principal.⁶

Where a principal instructed his broker to buy shares, but refused to pay for them owing to a petition for winding-up the company being presented before settling-day, and the broker in consequence resisted an action and incurred costs,

¹ *Josephs v. Pebrer* (1825), B. & C. 639.

² *Harker v. Edwards* (1887), 57 L.J. Q.B. 147.

³ See the cases collected in note 2, p. 89, *ante*.

⁴ *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701.

⁵ *Westropp v. Solomon* (1819), 8 C.B. 345; 19 L.J. C.P. 1.

⁶ *Henkel v. Pape* (1870), L.R. 6 Ex. 7; 40 L.J. Ex. 15; 23 L.T. 419; 19 W.R. 106.

(b) Where customs are unreasonable.

(c) Where telegraphic instructions inaccurate.

(d) Where loss due to resisting action or broker's insolvency.

it was held that he could not recover such costs from his principal.¹ And where the loss, in respect of which an indemnity is sought, is caused by the insolvency of the broker, the law does not imply a promise on the part of the principal to recompense the broker.²

(e) Where purchase-money and transfer not tendered.

In *Bowlby v. Bell*,³ which was decided in 1846, a broker had been employed to sell certain railway shares, but being unable to deliver them at the settlement, as the scrip had been sent to the company's offices for registration, he paid to the purchaser the difference between the contract price and the price at which the latter was able to purchase similar shares. He then claimed to be indemnified by the vendor, but it was held that the action would not lie, since, if the contract was for unregistered shares, the broker was not authorized to make it; and if for registered shares, the purchaser, not having tendered either the purchase-money or a transfer, was not in a position to proceed against the broker, who therefore paid the money in his own wrong, and could not recover it from his principal as money paid to his use.⁴

(f) Where a company buys its own shares.

Where a broker is employed by the directors of a company to do something which is beyond the powers of the company, as, for instance, to purchase the company's own shares for the purpose of supporting the market without an authorization from the articles of association, the broker is not entitled to prove, in the company's winding-up, for the price of the shares; and, apparently, if he had already received the price, he would be liable to refund it. For, being a stockbroker, he must know "that a purchase by a company of its own shares is not a legal transaction, unless there is a clear, distinct, undoubted, and special authority authorizing them to do so."⁵

¹ *Clegg v. Townshend* (1867), 16 L.T. 180.

² *Duncan v. Hill* (1873), L.R. 8 Ex. 242; 42 L.J. Ex. 179; 29 L.T. 268; 21 W.R. 797, overruling same case, L.R. 6 Ex. 255. But see *Hartas v. Ribbons*, p. 110, *ante*.

³ 3 C.B. 284; 16 L.J. C.P. 18.

⁴ See also *Stephens v. De Medina* (1843), 4 Q.B. 422.

⁵ *In re London, Hamburg, and Continental Exchange Bank, Zulueta's Claim* (1870), L.R. 5 Ch. 444, 452.

The result of the above cases is that the proper course for a broker to pursue where he has entered into contracts on the Stock Exchange at the instance of a principal who subsequently refuses to pay or deliver, as the case may be, is to pay to the vendor or purchaser the amount of the loss caused by such refusal, and then to claim the amount from his principal, who will be compelled to repay him, subject to the exceptions noticed above. This is, in fact, the only course which a broker can pursue without incurring a liability to be expelled from the Stock Exchange.

Formerly, unless a broker in the City of London had been duly admitted by the Court of Aldermen, he was not permitted to practise as a paid broker;¹ and if he did practise, not only did he render himself liable to a fine, but he was unable to maintain an action against his principal to recover his commission.² The point has now ceased to be of practical importance, as the power of the Court of Aldermen in respect of the licensing of brokers was abolished in the year 1884.³

Broker's
commis-
sion.

Under Sir John Barnard's Act, gaming contracts were illegal, and brokers who entered into such contracts did not acquire any legally enforceable claim to commission. That Act is repealed, but the principle would still hold good were a broker to make an illegal contract on his principal's behalf.⁴

At present, unless the contract is either illegal or a mere gaming and wagering transaction within sec. 18 of 8 & 9 Vict. c. 109,⁵ when the Gaming Act of 1892 prevents it from being legally enforced, or unless it incorporates some

(i.) For
making
contracts.

¹ 6 Anne, c. 16. And see *Jansen v. Green* (1767), 4 Burr. 2013; *Clarke v. Powell* (1833), 4 B. & Ad. 846; 2 L.J. K.B. 145.

² *Cope v. Rowlands* (1836), 3 M. & W. 149; 6 L.J. Ex. 63; *Ex parte Dyster* (1816), 1 Mer. 155; 2 Rose, 349.

³ 47 Vict. c. 3.

⁴ *Josephs v. Pebrer* (1825), 3 B. & C. 639.

⁵ As to the transactions which fall within that section, see p. 172 *et seq.*

custom which is unreasonable,¹ the broker is entitled to receive the usual commission as soon as he has carried out his principal's instructions.² But the commission is not earned where the broker appropriates to the principal's account securities of which, unknown to the principal, he is already possessed.³ Moreover, the broker is not entitled to commission where he has himself carried over his principal's securities and has charged the ordinary rate for doing so, since he is then no longer acting as an agent but as a principal.⁴

(ii.) For identification upon transfer of stock at the Bank of England or payment into court.

The payments made to a broker by way of commission include payments for many services besides those rendered in effecting purchases or sales. Of course where a principal who is *sui juris* is acting on his own account, he is at liberty to make what payments he pleases to his broker, and to employ him in any way he thinks fit. And where he is acting as trustee for another, although his powers are more restricted, he is perfectly justified in making such payments to the broker as are generally made in the ordinary course of business. And so in *Jones v. Powell*,⁵ an executor, who, upon transferring stock at the Bank of England to a legatee, paid one-sixteenth per cent. to a broker for identifying him—it being the practice of the bank to require such identification—was allowed the payment in passing his accounts. And where the identification has taken place in the course of a transfer of stock into court, the payment of one shilling and threepence per cent. to a broker for that purpose is a

¹ See the cases collected in note 2, p. 89, *ante*.

² *Learoyd v. Bracken* [1894], 1 Q.B. 114; 63 L.J. Q.B. 96; 69 L.T. 668; 42 W.R. 196.

³ *Skelton v. Wood* (1895), 71 L.T. 616. It seems that the principal is justified in such cases in refusing to pay the sums claimed by the broker without bringing into account the sums which he has already received from the broker. *Ibid*. The broker is not entitled to differences in such a case, nor in a case where, between the dates within which the differences are said to have arisen there have not in fact been any continuing contracts open for the principal's account, but the broker has sold the securities and re-bought them without the principal's knowledge.

⁴ See *Sachs v. Spielmann* (1889), 5 T.L.R. 487.

⁵ (1843), 6 Beav. 488.

proper payment and will be allowed in taxing the parties' costs.¹

In connection with the question what payments a trustee is justified in making to his broker out of the trust moneys, it is to be noticed that in making investments on behalf of the trust, the trustee may, without exposing himself to any legal liability, employ a broker and pay over to him the trust money, provided that it is paid in the ordinary course of business and under such conditions as a prudent man of business would pay it. For although the trustee is primarily liable for the proper care and custody of the money until it has actually been invested, he is not bound personally to undertake business which, according to the usual mode of conducting business of a like nature, persons acting with reasonable care and prudence on their own account, would ordinarily conduct through mercantile agents. In *Speight v. Gaunt*² a broker who was employed by a trustee to buy securities of municipal corporations authorized by the trust, gave to the trustee a bought note which purported to be subject to the rules of the London Stock Exchange, and obtained the purchase-money from him on the representation that it was payable on the following day, which was the next account-day on the Exchange. The broker never procured the securities, but appropriated the money to his own use and subsequently became insolvent. Some of the securities were procurable only from the corporations direct, and were not bought and sold in the market, and there was evidence that the form of the bought note would have suggested to experts that the loans were to be direct to the corporations. But the House of Lords held that there was nothing which was calculated to excite suspicion in the mind of an ordinarily prudent man of business, and that, such payment being in accordance with the usual course of business on the London Exchange, the trustee was not liable to the *cestuis que trustent* for the loss of the trust funds. Lord Selborne,

Payment
of trust-
money to
broker.

*Speight v.
Gaunt.*

¹ *Davenport v. Powell* (1844), 14 Sim. 275.

² (1883), 9 App. Cas. 1; 53 L.J. Ch. 419; 50 L.T. 330; 32 W.R. 435.

however, considered that if the broker had represented to the trustee that the contracts were with corporations for loans direct to them from the trustee, the latter would not have been justified in paying the money to the broker, as in that case there would not have been any sufficient reason for such a course of action.¹

But trustees will render themselves liable to their *cestuis que trustent* if they are negligent in allowing the trust securities or funds to remain in the broker's hands for an undue length of time, or in not seeing to their due application. In *Magnus v. Queensland National Bank*,² a stock-broker, one of three trustees, acted as broker to the trust. He proposed to his co-trustees to sell certain London, Brighton, and South Coast Railway debenture stock belonging to the trust, and with the proceeds to buy North Eastern preference stock. The three trustees, on the 27th of January, 1882, executed a transfer of the Brighton stock for a nominal consideration to two officers of a bank of which the stock-broker was a customer. The broker gave the transfer to the bank as a security for a loan to himself, and the transfer was registered. The broker, in February, 1882, paid off the loan, and the bank transferred the stock to purchasers named by him, and without giving any notice to his co-trustees, allowed him to receive the purchase-money. He invested it in North Eastern stock in his own name, and in the following year sold out the stock and misappropriated the proceeds. Shortly after the sale of the Brighton stock the broker had given an account to his co-trustees showing the sale of the Brighton and re-investment in North Eastern stock, and he subsequently rendered another account representing the latter stock as forming part of the trust funds. In an action by the co-trustees against the bank, it was held that the bank had occasioned the loss by allowing the purchase-money to come into the hands of the broker who had no authority to receive it, and whom they had not sufficient ground for

¹ As to how far trust funds in the hands of a broker may be followed and recovered, see p. 128, *post*.

² (1888), 37 Ch. D. 466; 57 L.J. Ch. 413; 58 L.T. 248; 36 W.R. 577.

supposing to have such authority, and that they were therefore liable to refund the amount to the co-trustees, although the latter had themselves been negligent in not seeing that the North Eastern stock was registered in their joint names. But it is clear that the co-trustees would have been obliged to bear the loss personally if, after notice from the bank, they had not seen to the proper application of the proceeds of the sale and the registration of the new investments.

Considerable doubt has been expressed at various times (iii.) For whether, in cases in which a broker is employed in connection with the promotion of a company, the directors of the company are justified in paying a portion of the assets to him for services rendered in "placing" its shares—that is to say, for obtaining persons to purchase and take up the shares—or for underwriting them. "placing" shares.

The point appears to have been first made the subject of legal proceedings in the year 1888, when it was considered in the case of *Re Faure Electric Accumulator Co.*¹ *Re Faure Electric Co.* Kay, J., there held that payment of brokerage or commission to a broker for placing a company's shares was an improper application of its capital, and was not authorized even by a power given by the memorandum of association to do whatever might be "conducive to" the specified objects of the company. The case appears to have depended on a special state of facts, the learned judge considering that the circumstances under which the payments to the brokers were made constituted such payments a fraud upon the company. If, however, the case was decided, as it was argued, upon the question whether the payments did not in effect amount to issuing shares at a discount, it must now be taken to be overruled by the later case of the *Metropolitan Coal Consumers' Co. v. Scrimgeour*.² *Metropolitan Coal Co. v. Scrimgeour.* In that case the action was brought by the liquidators of a company to recover from the company's brokers a sum of £26 10s. paid to them by the directors for services rendered in placing the company's shares. But the Court of Appeal,

¹ 40 Ch. D. 141; 58 L.J. Ch. 148; 59 L.T. 918; 37 W.R. 116.

² [1895], 2 Q.B. 604; 65 L.J. Q.B. 22; 73 L.T. 137; 44 W.R. 35.

distinguishing it from the case before Mr. Justice Kay, held that the directors were justified in making the payment, and that such payment did not amount to issuing the company's shares at a discount. Directors, however, are not justified in making payments to a broker for placing shares which have not in fact been placed through his instrumentality.¹

(iv.) For underwriting shares.

An agreement to pay a specified percentage to a broker in return for his undertaking to underwrite a certain number of shares in a company is a good and enforceable agreement, and the word "discount" if used in the agreement does not make it invalid, but must be construed as "commission."²

Distinction between placing and underwriting shares.

The distinction between the payment of brokerage for placing shares and the payment of underwriting commissions is that in the former case the payment is made for services rendered in obtaining persons to subscribe for the shares, while in the latter case the payment is the underwriter's reward for binding himself to take a given number of shares if the public cannot be induced to do so. The distinction is material, for the mere placer of shares is not liable to have his name inserted on the register as a shareholder, although he may be liable to an action for damages if he fails to perform his contract. And though an agreement to place shares and an agreement to take shares might, under certain circumstances, come to the same thing, there would be many defences open to one who had agreed to place shares which would not be open to a shareholder.³ But the underwriter of shares in a company is liable to have his name placed on the list of contributories in the event of the winding up of the company, in respect of all the shares underwritten by him which have not already been allotted. For an agreement to underwrite will be treated, not merely as a guarantee, but as an application for an allotment of so many shares as have not been

¹ *West of England Paper Mills v. Gilbert* (1891), 61 L.J. Ch. 92.

² *In re Licensed Victualler's Mutual Trading Association, Ex parte Audain* (1889), 42 Ch. D. 1; 58 L.J. Ch. 467; 60 L.T. 684; 37 W.R. 674.

³ *In re Monarch Insurance Co., Gorrisen's Case* (1873), L.R. 8 Ch. 507; 42 L.J. Ch. 864; 28 L.T. 611; 21 W.R. 536.

applied for by the public.¹ So that in *Shaw v. Bentley*,² where the plaintiff had agreed with an agent of the company to underwrite, if necessary, two hundred shares in Bentley & Co., and to apply for such shares on that day on which the list opened, and the plaintiff failing to apply, the company's agent made the application for him, and the shares were duly allotted, it was held that the plaintiff could not repudiate the agent's application, and that the fact that the plaintiff was not informed as to the number of shares for which he was alleged to be liable, did not affect his liability under the contract.

Since the above cases were decided, the law in relation to companies has been considered by a Royal Commission, and the draft bill which is the result of their labours, contains the following provisions bearing upon this subject:—

1. It shall be lawful for a company to pay a commission either in money, shares, or otherwise, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring, or agreeing to procure, subscriptions for any shares in the company, if the payment of such a commission and the amount or rate per cent. of the commission paid, or agreed to be paid, are respectively authorized by the articles of association and disclosed in the prospectus, if any, and the commission paid or agreed to be paid does not exceed the amount of rate so authorized.

2. Save as aforesaid, it shall be unlawful and beyond the powers of any company to apply any of its shares or capital-money, either directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions for any

Provisions
of draft-
bill.

Lawful
payments
by way of
commis-
sion.

Unlawful
payments.

¹ *Ex parte Audain, supra*; *Carmichael's Case* [1896], 2 Ch. 643; 65 L.J. Ch. 902; 75 L.T. 45.

² (1893), 68 L.T. 812. See also *Ormerod's Case* [1894], 2 Ch. 474; 63 L.J. Ch. 578; 70 L.T. 795; 42 W.R. 701; *In re Bentley* (1894), 69 L.T. 204.

shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company, or to the contract-price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract-price, or otherwise.

Director's
liability
where
payments
unlawful.

3. All directors who are parties to the payment of any such unlawful commission, discount, or allowance as aforesaid, shall be jointly and severally liable to repay to the company the amount thereof, with such interest as the Court may direct.

Liability
of persons
receiving
unlawful
payments.

4. Every person who receives any shares or capital-money of a company in payment of any such unlawful commission, discount, or allowance as aforesaid, or for the purpose of the same being applied in payment thereof, knowing the same to be the property of the company, shall be liable to repay or restore the same or the value thereof to the company with such interest as the Court may direct.

Stamping
and send-
ing con-
tract note.

Besides making the contract for his principal, the broker has a further duty to perform before he is entitled to his commission. As soon as the purchase or sale is effected, a note is to be sent advising the principal of all particulars of the transaction.¹ Before sending this contract-note the broker is obliged to stamp it if it has reference to securities of a greater value than £5, and to duly cancel the stamp. If the value of the security is below £100 the duty is one penny, denotable by an ordinary adhesive penny stamp; if the value is above £100 the duty is one shilling, denotable by a stamp of that amount.²

Penalties
for failure
to send
or stamp.

But the penalties imposed for failing to send and for failing to stamp a contract-note are not identical. For while a broker who fails to send a note to his principal renders

¹ 33 & 34 Vict. c. 97, s. 69; 41 Vict. c. 15, s. 26; 54 & 55 Vict. c. 39 (Stamp Act, 1891) s. 52, subs. 1.

² 54 & 55 Vict. c. 39, s. 52, and sched. "Contract Note"; 56 Vict. c. 7, s. 3, subs. 1.

himself liable to a fine of £20,¹ a broker who sends a note but neglects to stamp it before doing so, not only renders himself liable to a fine of the same amount,² but is also prevented from recovering the commission to which he would otherwise be entitled in respect to the transaction to which the note relates.³

In the case of *Learoyd v. Bracken*,⁴ where the trustee in bankruptcy of a stock-broker was seeking to recover from the broker's principal money due for commissions in respect of continuation transactions, of which no contract-note had been sent to the principal, it was argued that it would be an anomaly that while a broker who sends a note unstamped, but containing the terms of the contract, cannot recover his commission, a broker who fails to send a note at all can recover. But the Court of Appeal held that the broker's trustee was entitled to recover on the ground that the statute does not expressly deprive the broker of his commission in the latter case, and that it must therefore be presumed that the Legislature intended that he should have it. The decision at which the Court ultimately arrived was undoubtedly correct, although certain passages in the judgments present some difficulty, and if the anomaly is to be corrected, it must be left to the Legislature which created it to set it right. For an anomaly it unquestionably is that the consecutive sections of a single Act should contain two provisions, both apparently intended as much to protect the public as to provide a source of revenue, and that a breach of the provision which is of the greater importance to the public should be visited with the less penalty. The existence of this state of things was probably due to an oversight on the part of the Legislature when consolidating previous revenue Acts in the Stamp Act of 1891. The penalty for not stamping was originally imposed by the

Learoyd v. Bracken.

Origin of the distinction between not sending and not stamping the contract-note.

¹ 54 & 55 Vict. c. 39, s. 53, subs. 1.

² *Ibid.* subs. 2.

³ 33 & 34 Vict. c. 97, s. 69, subs. 3; 54 & 55 Vict. c. 39, s. 53, subs. 3.

⁴ [1894], 1 Q.B. 114; 63 L.J. Q.B. 96; 69 L.T. 668; 42 W.R. 196.

Stamp Act of 1870,¹ while that for not making and sending a note was for the first time imposed by the Customs and Inland Revenue Act of 1888,² and when placing these provisions consecutively in the Act of 1891, the Legislature no doubt overlooked the distinction.

Party
chargeable
with cost
of stamp.

The contract-note, as has been shown, must bear a penny or a shilling stamp, according to the value of the security to which it relates. When the duty amounts to a shilling the broker is authorized to add the value of the stamp to his charge for brokerage,³ but where a penny only is chargeable the Act does not contain a similar authorization, and the broker must himself satisfy this not very exorbitant demand.

Note
advising
several
trans-
actions.

Where a note advises the purchase or sale of more than a single description of security, it is, for the purpose of being charged with duty, deemed to be as many contract-notes as it contains descriptions of stock or other security, and is obliged to be stamped accordingly.⁴

Broker's
right
to close
principal's
account.

Where a principal has instructed his broker to carry over securities to the following settlement, but has not upon pay-day of the current settlement placed at the broker's disposal funds or available collateral security sufficient to cover differences due from him, of which the broker has given him notice before pay-day, the broker is justified in closing his account, and may successfully maintain an action for the balance.⁵ But he is not entitled to close a portion of his principal's account only and

¹ 33 & 34 Vict. c. 97.

² 51 Vict. c. 8.

³ 54 & 55 Vict. c. 39, s. 52, subss. 3, 4; 56 Vict. c. 7, s. 3, subs. 2.

⁴ 54 & 55 Vict. c. 39, s. 52, subs. 2.

⁵ *Davis v. Howard* (1890), 24 Q.B.D. 691; 59 L.J. Q.B. 133; *Lilley v. Rankin* (1886), 56 L.J. Q.B. 248; 55 L.T. 814; *Murray v. Hewitt* (1886), 2 T.L.R. 872; *Druce v. Levy* (1891), 7 T.L.R. 259. Cover does not run off automatically, but the account must be closed by one of the parties. If stock falls below the margin stipulated for, but rises again before the broker closes the stock and appropriates the cover, he cannot close the stock subsequently; see *Hogan v. Shaw* (1889), 5 T.L.R. 613.

keep the remainder open.¹ If the closing of the account is entirely due to the broker's default and not to any misconduct on the part of the principal, and the account is closed without notice to the principal, the broker cannot recover the amount which the account shows to be due to him at the time of closing, but will be liable to an action by his principal if the latter has suffered loss in consequence of such an unauthorized closing.² If, however, the broker, though himself in default, has given notice to the principal of his circumstances, and has offered him the choice between having the account closed and having it completed by another broker, and the principal has chosen the former course, the broker is entitled to recover any balance that may be due to him.³

Although it is usual to carry over a principal's transaction where he wishes this course to be adopted and is not in default, the broker is not entitled to carry over without the principal's consent, nor is there, it seems, any legal obligation upon him to do so, unless there has been an express agreement to that effect.⁴ "If," said Bramwell, L.J., in *Thacker v. Hardy*,⁵ "a principal orders a broker to sell for him £10,000 consols for the next account, I think it is clear that he could not afterwards, as a matter of right, order him to buy them; the broker might object that he was not bound to do so." In *Fenwick v. Buck*⁶ the defendant bought shares in a company for April 27, but the transfer was not delivered to him for execution till May 12, and he in consequence refused to execute it, and repudiated the contract. Evidence was given that by the rules of the Stock Exchange ten days after the account-day are allowed

No right
or obligation
to
carry over.

¹ *Samuel v. Rowe* (1892), 8 T.L.R. 488.

² *Duncan v. Hill* (1873), L.R. 8 Ex. 242; 42 L.J. Ex. 179; 29 L.T. 268; 21 W.R. 797.

³ *Hartas v. Ribbons* (1889), 22 Q.B.D. 254; 58 L.J. Q.B. 187; 37 W.R. 278.

⁴ *Newton v. Cribbes* (1884), 11 Court Sess. Cas. (4th series) 554; and see *Marted v. Paine* (1869), L.R. 4 Ex. 81; 38 L.J. Ex. 41; 20 L.T. 34.

⁵ (1878), 4 Q.B.D., at p. 691.

⁶ (1871), 24 L.T. 274; 19 W.R. 597.

for completion of contracts, and if a contract is not completed within ten days it is continued until the purchaser's broker gives notice to the other party to buy in. The ten days in this case expired on May 8. The case was ultimately decided against the defendant, but in the course of his judgment Lord Romilly, M.R., said that "he assented to the doctrine that a broker cannot carry over a contract from one settling-day to another without the assent of his principal, but in the present case the contract was not carried over, but only suffered to remain for four days more after these ten days allowed by the rules had expired, and the defendant had not attempted to put an end to the contract. In *Maxted v. Paine*, where the shares were actually carried over to another settling-day without authority from the ultimate purchaser, he had put an end to the contract on the day on which the ten days allowed by the rules of the Stock Exchange for the tender of the shares had expired, and it was held that he had ceased to be a person bound to purchase them; but *Maxted v. Paine* did not apply to this case, which was merely a case of delay in delivery."

Ratifica-
tion of
carry-over.

Where, however, securities have been continued without the principal's consent, and the principal has subsequently ratified the proceeding, whether expressly or by implication, he cannot afterwards raise an objection.¹

At times it happens that a broker who is instructed to carry over, instead of carrying over on the market and entering into contracts for that purpose, takes in the securities himself and charges his principal the contango rates ruling in the market at the time. In so doing the broker changes his position as agent, and constitutes himself a principal in so far as the carrying over is concerned. This is, of course, beyond the scope of his original authority, inasmuch as he was employed merely as agent. Therefore, in order to justify the transaction, it is incumbent upon the

¹ *Maxted v. Morris* (1869), 21 L.T. 535; *Campbell v. Brass* (1891), 7 T.L.R. 612.

broker to show a subsequent authority from his principal to adopt this course. Such authority may be either express or implied. In several cases it has been held that although there was no original authority from the principal to the broker to take in the securities and carry them over personally, yet if such a course has been adopted by the broker and he has subsequently delivered to his principal accounts or contract notes showing the transactions, and the principal has not repudiated them, he will be deemed to have ratified the broker's conduct, and will be bound thereby.¹

An authority to a broker to carry over, whether express or implied, is revoked by the death of the principal.²

A broker with whom bonds or share certificates have been deposited by his principal as security for a debt, on failure by the principal to liquidate the debt at the stipulated time, is entitled to an order for sale but cannot obtain foreclosure, for such things are personal chattels and the remedy of foreclosure does not apply to them.³ In *Hamilton v. Young*⁴ an alleged custom on the Dublin Stock Exchange, which was relied upon as authorizing brokers, who are entitled to sell securities belonging to a customer, to take over such securities at the price of the day if there is an inadequate demand, and a forced sale will depress the selling price, was held to be unreasonable and incapable of being enforced against a principal who was not proved to have been acquainted with it.

Right to sell bonds, etc., deposited as security

Where a broker has with his own money purchased securities for a principal, he is justified in immediately re-selling the securities in the event of the principal's death, bankruptcy, or insolvency before repayment. If the amount realized upon such sale is less than the amount for which

Right to sell securities bought with broker's money.

¹ *Petre v. Sutherland* (1887), 3 T.L.R. 422; *Sachs v. Spielmann* (1889), 5 T.L.R. 487.

² *Phillips v. Jones* (1888), 4 T.L.R. 401.

³ *Carter v. Wake* (1877), 4 Ch. D. 605; 46 L.J. Ch. 841.

⁴ (1881), 7 L.R. Ir. 289. It is perhaps doubtful whether this decision would now be followed in view of the recent decision in *Walter v. King*, the *Times*, March 18, 1897; and see p. 102, *ante*.

the securities were bought, the broker is entitled to claim against the principal's estate for the balance, though possibly his claim will be subject to a deduction for any loss which may have been incurred by selling before the ensuing settling-day.¹ And if the broker is himself insolvent, although he has not paid his debts in full, he is entitled to prove against the principal's estate for the increased balance which appears due to him after the sales have been effected.²

Right
of London
broker
to credit
country
broker
with pro-
ceeds of
principal's
securities.

A custom has at times been alleged to exist on the Stock Exchange by which if a principal in the country employs a country broker to sell securities for him, and the country broker employs a London broker, the London broker is entitled to set off against the purchase-money which is obtained from the sale debts due to him from the country broker. In the absence of a well-established custom to this effect, it is clear that such a claim could not be supported. The evidence adduced in support of the existence of the alleged custom in the cases referred to below was held to be insufficient to establish it, but even if established such a custom would no doubt be held to be unreasonable as against persons not proved to have been aware of it.³

No right
to credit
trust-
money to
trustee's
account.

If a broker is instructed by a trustee, with whom he has formerly dealt and against whom he has an account outstanding, to sell securities on behalf of the trust, he may not, if he has had notice of the facts, credit the purchase-money to the trustee's personal account. In *Pearson v. Scott*⁴ a stock-broker was instructed by a solicitor to sell certain securities on behalf of the executors of a will. The solicitor had previously employed the broker in speculative transactions, and there was a balance due from him to the broker on such transactions. The stock was sold, and the solicitor

¹ *Lacey v. Hill, Scrimgeour's Claim* (1873), L.R. 8 Ch. 921; 42 L.J. Ch. 657; 29 L.T. 281; 21 W.R. 857.

² *Lacey v. Hill, Crowley's Claim* (1874), L.R. 18 Eq. 182; 43 L.J. Ch. 551; 30 L.T. 484; 22 W.R. 586.

³ *Cressley v. Magniac* [1893], 1 Ch. 594; 67 L.T. 798; 41 W.R. 598; *Blackburn v. Mason* (1893), 9 T.L.R. 286.

⁴ (1878), 9 Ch. D. 198; 47 L.J. Ch. 705; 38 L.T. 747; 26 W.R. 796.

returned to the broker transfers of the stock, with receipts indorsed, signed by the executors. The broker carried a portion of the purchase-money to the credit of the solicitor in the account between them. It was held that the broker must be considered to have had notice that the shares were not the property of the solicitor, and that, though the solicitor had authority from the executors to receive the purchase-money, payment to him by giving him credit in account was not sufficient to discharge the broker, who remained liable to the executors for the balance.

In considering the question of a broker's liability for wrongful acts which have caused injury to a principal, it is to be remembered that where the broker who has committed the wrongful act is a member of a firm, the principal may look for his remedy, not merely to the single member who caused the injury, but to all the partners, who will be jointly liable to recompense him, provided that the defaulting partner was acting in the ordinary course of the business of the firm, or with the authority of his co-partners.¹

Liabilities
of broker.
As a partner.

Moreover, a firm who identify themselves with the management of property of which one member of the firm is a trustee, may render themselves liable for the safe custody of the property. In *De Ribeyre v. Barclay*,² a trustee of a marriage settlement, who was a member of a firm of brokers, had in his custody certain Portuguese bonds belonging to the trust. After the marriage the firm bought Brazilian bonds on account of the trust. From the course of dealing the Court considered that the bonds were in the custody of the firm, and held the trustee's partners liable to replace them when they had been appropriated by the trustee to his own use. "The transaction was in the regular course of business, and was so treated by the partner who conducted it. As a trustee, Edward Ellis" (the trustee of the settle-

¹ Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 10, and Lindley on Partnership, 6th edit., pp. 157 *et seq.*

² (1857), 23 Beav. 107, 118; 26 L.J. Ch. 747.

ment) "could not have bought or deposited bonds; his acts were those of a stock-broker; he was instructed in that character, and in that character he acted."

Principal's
right to
follow
money.

When a principal has entrusted money or securities to a broker for investment or sale, and they or their proceeds have been misappropriated, the principal is entitled to follow and recover them so long as he can trace them, provided that, in the case of bearer securities, they have not come into the hands of a holder for value without notice of a prior title.¹ In practice there is, no doubt, often a difficulty in tracing a fund that has once been misapplied, and the principal's remedy in such cases is usually confined to proving in the broker's bankruptcy; but this of course does not affect the principle. It is immaterial whether the fund in question is one of which the principal is a trustee, or whether it is the principal's own property. The relation of a principal to his broker is not that of a customer to his bank, but of a principal to an agent in whose hands he has placed money to be applied in a particular manner. A fiduciary relation is in consequence created between broker and principal which renders the broker a trustee of the property entrusted to him, and entitles the principal to claim it, whether it is his own or trust property. Accordingly it follows that where the principal is acting as trustee it is not necessary that the broker shall have notice of the fact in order that the principal may be entitled to recover

¹ As to what amounts to a notice of another's title sufficient to dis-entitle a holder to call himself a *bonâ fide* holder, see pp. 224 *et seq.* If the securities are inscribed stocks or shares which require a transfer for their delivery, the certificates will be deposited either with a blank transfer or without any transfer at all. If deposited with a transfer executed by the principal in blank, any one receiving them from the broker *bonâ fide* and for value, together with the transfer duly filled in and registered in the broker's name, will apparently obtain a good title unimpeachable by the broker's principal; see p. 223, *post.* But any one who takes them with a transfer which the broker has forged, obtains no title whatever against the true owner though he took for value and without notice; see p. 228, *post.*

in case of misappropriation. Some doubt was expressed on the point by the Court of Appeal in *ex parte Cooke*,¹ but it has now been set at rest by the judgment of Sir George Jessel in the later case of *Knatchbull v. Hallett*.¹

In the case of *Taylor v. Plumer*,² decided at the beginning of the century by Lord Ellenborough, a broker received from his principal a draft for money belonging to the principal for investment in Exchequer bills. He misapplied the money by purchasing American stocks and bullion, and was taken with the securities upon him as he was starting for America. In an action by the broker's assignee in bankruptcy for delivery of the securities to him, it was held that the principal was entitled to keep them, as they had been purchased with his money. This decision was subsequently approved by the Court of Appeal in the case of *Knatchbull v. Hallett*,³ so far as it established the right of the principal to follow his property when misappropriated, though Sir George Jessel pointed out that Lord Ellenborough had under-estimated the right where the property to be recovered consisted of money. *Knatchbull v. Hallett* was not, it is true, an action between broker and principal, but the law governing the relations of persons who, though not trustee or *cestui que trust*, yet stand in a fiduciary position towards one another, was so clearly and fully expounded by the Court of Appeal as to leave no reasonable ground for doubting that the view taken above is correct.

In *Ex parte Cooke*,⁴ a trustee employed a broker to sell out consols and invest the proceeds in railway stock, giving him notice of the trust. The broker sold the consols for cash, paid the cheque which he received for the price into his account at the bankers, and bought railway stock to the same amount for settling-day. But before settling-day he stopped payment and went into liquidation. The trustee claimed so much of the broker's balance at his bankers as was attributable to the price of the consols, and it was held

¹ See these cases *infra*.

² (1815), 3 M. & S. 562.

³ (1880), 13 Ch. D. 696; 49 L.J. Ch. 415; 42 L.T. 421.

⁴ (1876), 4 Ch. D. 123; 46 L.J. Ch. 52; 35 L.T. 649; 25 W.R. 171.

that he was entitled to recover, as the broker knew that the money was trust money. "I do not give any opinion," said Baggallay, L.J., "how this case would have stood if the money had not been trust money, or if the broker had received it without any notice of its being such. Before doing so, I should desire an opportunity for further consideration, though I certainly am at present much impressed by the decision in *Taylor v. Plumer*. It is clear, however, to my mind, on the evidence, that Strachan was informed of the fact that the consols were a trust fund. . . . But if the fact was communicated to him that the consols were trust funds, he was bound to deal with the produce as such. I am not prepared to say that his paying the money into his account at the bank was necessarily a breach of trust; but the money so paid in remained trust money, and if it can be traced, it can be followed. There may be difficulty in tracing it, but that does not affect the principle." And Bramwell, J.A., added, "If the whole of the money had remained in the hands of the bankers without being drawn out, I think it clear that the *cestui que trust* could have claimed it as trust money traced into their hands. And if on properly attributing the payments any part of it is found to remain there, the same rule must apply to what so remains. As to the other point, whether the money could have been followed if it had not been trust money, the case appears to me indistinguishable from *Taylor v. Plumer*." The questions raised by the lords justices in this case must, as has already been pointed out, be regarded as now settled by Sir George Jessel's elaborate judgment in *Knatchbull v. Hallett*. The question of notice, it is true, was not specifically dealt with, as the circumstances rendered it unnecessary, but the point appears to be immaterial if that very learned judge was correct as to the broker's fiduciary position.

Principles
applicable
to follow-
ing money.

When a broker has paid his principal's money into his own account, and after drawing upon his account goes into liquidation, the sums drawn out will not be taken to be those which were first paid in, but the drawer will be presumed to have withdrawn his own money in preference to

the trust money. But where the money of two or more principals has been paid into the broker's single account, the ordinary rule¹ will apply as between the principals, and the sums withdrawn will be presumed to have been drawn out in the order in which they were paid in.²

A principal is not prevented from following and recovering his money either by the fact that it has been mixed with other money in an indistinguishable mass, or that it has been expended, either alone or with money belonging to the broker or other principals, in the purchase of property. For, in the first case, equity will permit the principal to take out of the mass the same quantity that was put in; and, in the second, the principal may, where the money belonged solely to him, either take over the property purchased or have a charge over it, or, where the purchase-money is drawn from a mixed fund, have a charge for the amount due to him.³ "The principle of law," said Thesiger, L.J., "may be stated, as it appears to me, in the form of a very simple, although at the same time very wide and general proposition. I would state that proposition in these terms: namely, that wherever a specific chattel is intrusted by one man to another, either for the purpose of safe custody or for the purpose of being disposed of for the benefit of the person intrusting the chattel, then either the chattel itself, or the proceeds of the chattel, whether the chattel has been wrongfully or rightfully disposed of, may be followed at any time, although either the chattel itself or the money constituting the proceeds of the chattel may have been mixed and confounded in a mass of the like material."

It is not unusual for a principal to deposit securities with his broker for the purpose of safe custody. Where this is done and loss or injury follows, a broker, who undertakes the duty without reward, and whose profession as a broker can

Custody of securities.

(i.) Gratuitous.

¹ Known as the rule in *Clayton's Case* (1816), 1 Mer. 572.

² *Knatchbull v. Hallett*, *supra*.

³ *Ibid*.

⁴ 13 Ch. D., at p. 722.

scarcely be said to imply special skill in such an undertaking, will only be liable to refund the amount of the loss if he has been grossly negligent, or, in other words, if he has not used such care as a prudent man of business would have exercised in his own affairs. "I agree," said Lord Loughborough, in *Shiells v. Blackburne*,¹ "with Sir William Jones, that where a bailee undertakes to perform a gratuitous act from which the bailor alone is to receive benefit, there the bailee is only liable for gross negligence. But if a man gratuitously undertakes to do a thing to the best of his skill, where his situation or profession is such as to imply skill, an omission of that skill is imputable to him as gross negligence."²

(ii.) For
reward.

If a broker were to receive reward for taking charge of securities, his liability would be very much increased. And in order to establish this greater degree of responsibility in the broker, it is not necessary that the reward should take the form of an actual money payment: any advantage or benefit to the deposittee, or any detriment or disadvantage to the depositor, is sufficient to constitute a legal consideration. In such a case the negligence on the part of the broker required to give rise to a claim against him would be very slight, though what constitutes actionable negligence must always be a question of fact, to be decided on a consideration of the circumstances of the particular case.³

There is, no doubt, a certain risk in depositing securities in the hands of a broker either for safe custody or as cover for a debt. For, should the securities be negotiable, and should the broker wrongfully dispose of them, the true owner cannot be heard to say, as against a holder for value who took without notice and in the ordinary course of business,

¹ (1789), 1 H. Bl. 158, at p. 163.

² See also *Giblin v. McMullen* (1868), L.R., 2 P.C. 317; 38 L.J. P.C. 25; 21 L.T. 214; 17 W.R. 445. Whether a very general practice among brokers to constitute themselves caretakers of their principals' securities might not be sufficient to fix them with the higher degree of responsibility, as holding themselves out as possessing special skill, is perhaps a question that deserves consideration.

³ See *In re United Service Co., Johnston's Claim* (1871), L.R. 6 Ch. 212; 40 L.J. Ch. 286; 24 L.T. 115; 19 W.R. 457.

that the broker had only a limited power to deal with them. The broker will be presumed to have had the same power to deal with the securities as any other person would have who should bring them into the market,¹ and the principal will be left to his remedy against the broker for exceeding his authority. And even if the securities are not negotiable, the principal may be estopped from denying the title of a *bonâ fide* holder for value, in whose favour he has himself executed transfers.²

SECTION II.—BROKER AND JOBBER.

The parties to the contract, as originally made on the Stock Exchange, are a broker and a jobber. This contract, as will be seen, is almost exclusively governed by the practice and regulations of the market in which it is made, and the occasions on which the general law intervenes are very infrequent. Such contract is invariably made in the broker's name,³ for in dealings between members of the Stock Exchange, non-members are not recognized; and therefore, even if a jobber should, on rare occasions, look to the credit of the principal as well as to that of the broker, where he considers that the latter's credit is insufficient,⁴ the broker is always personally liable, under the rules of the Stock Exchange, for the fulfilment of all bargains into which he enters. And this is undoubtedly a salutary rule; for no one is in a better position for ascertaining the credit of the principal than the broker whom he employs, and who is in direct communication with him. But even if the broker were not liable under the Stock Exchange rules, it is clear that he would be liable at law; for he who induces another

The
broker's
liability.

¹ *Goodwin v. Roberts* (1876), 1 App. Cas. 476; 45 L.J. Ex. 748; 35 L.T. 179; 24 W.R. 987. See, too, *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140.

² See *Bentinck v. London Joint Stock Bank*, *supra*.

³ The fact that the contract is made in the broker's name does not excuse the principal from performance: *Kemble v. Atkins* (1816), Holt, N.P.R. 427.

⁴ *Mortimer v. McCallan* (1840), 6 M. & W. 58; 9 L.J. Ex. 73.

to enter into a contract in reliance upon his own credit, cannot subsequently compel that other against his will to accept in substitution the credit of a third person, of whose name, and perhaps existence, he was unaware at the time of contracting.¹

Legal proceedings among members.

However, it is not very probable that the question will come before the courts, for a member is not permitted to enforce by law a claim arising out of Stock Exchange transactions against a fellow member without the consent either of the member himself, or of the General Purposes Committee.² It is, of course, improbable that a member would give his consent to being made a defendant in an action under any but very exceptional circumstances; and the Committee would, no doubt, generally refuse their consent to the trial at law of a question which they are themselves peculiarly competent to decide. And although this does not act as an absolute bar to legal proceedings, still the penalty of expulsion from the Stock Exchange to which a member, who instituted such proceedings without permission, would render himself liable, would almost invariably deter him from taking action.

Settlement of disputes.

The Stock Exchange itself provides a domestic tribunal to which members, and, in some cases, non-members,³ may refer their disputes, the Committee being the ultimate tribunal for the decision of all questions affecting members and their interests. But the Committee will not, in the first instance, take into consideration disputes in which the question does not affect the general interests of the Stock Exchange. Disputes of purely personal interest are obliged to be referred to the arbitration of private members; and it is only when persons willing to arbitrate cannot be found, or, if found, cannot agree upon their award, that the Committee will consent to intervene in such matters.⁴

Unrecognized bargains.

There are certain transactions of which the Committee will not in any case take cognizance. Such are dealings in

¹ *Magee v. Atkinson* (1837), 2 M. & W. 440; 6 L. J. Ex. 115.

² Rule 54.

³ Rule 55.

⁴ Rule 65.

letters of allotment of loans, or of the shares in new companies.¹ It appears that when a particular species of transaction is not prohibited, but is merely refused recognition, the Committee will not exercise the penalty of expulsion for failure to fulfil the bargain.² And since, as has been seen, members are not permitted to take legal proceedings against one another, the payment of a debt arising out of a transaction of this description is, it seems, in practice, dependent entirely upon the honesty of the member who owes it. The rule as to dealings in prospective dividends was originally framed in a similar manner;³ but owing to the decision in *Marten v. Gibbon*,⁴ it has been altered, and members are now absolutely prohibited from making such contracts.

Although during the course of a transaction on the Stock Exchange a novation takes place, one of the parties to the original contract being released from liability, and the liability of the new party to the subsequent contract being taken in substitution,⁵ this transfer of liability is not absolute so far as members are concerned. For under the Stock Exchange rules the selling broker is entitled to demand the purchase-money from the member who actually passed the ticket to him; and should he apply to the issuer of the ticket and fail to obtain payment from him, or should he receive a cheque which is subsequently dishonoured, he may even then have recourse to the member who passed the ticket to him.⁶

SECTION III.—JOBBER AND PRINCIPAL.

When a broker executes the instructions of his principal to buy or sell securities, his contract is, in the first instance, made with a jobber. This contract the jobber may under certain circumstances be compelled to personally carry out. In return for the liability which he thus incurs he obtains

Continu-
ance of
member's
liability.

Relation
between
jobber and
principal.

¹ Rule 60. See also Rules 62, 63, 79, 90, 93, 112.

² *Marten v. Gibbon* (1875), 33 L.T. 561; 24 W.R. 87.

³ Rule 64.

⁴ See note 2, *supra*.

⁵ See pp. 141-145, *post*.

⁶ Rule 68.

the right to look for payment or delivery from either of two persons. In the first place he may make the broker responsible for the payment of the purchase-money or delivery of the securities;¹ or, secondly, he may claim against the actual vendor or purchaser, as the case may be.²

Principal's
responsi-
bility at
law.

It was at one time thought that where one of the parties to a contract made by an agent, had given credit to the agent, believing him to be the principal, if the real principal *bonâ fide* paid the agent at a time when the other party still gave credit to the agent, the principal was freed from further liability.³ The law, however, appears to be now settled that a principal is not discharged as against the other party by payment to his own agent, unless the other party has by his conduct led the principal to believe that he has settled with the agent.⁴ From the usual course of business on the Stock Exchange the jobber is aware of the probable existence, behind the broker with whom he is dealing, of a principal whose name is undisclosed. He may at any time become desirous to rely upon the credit of the principal rather than upon that of the broker, and he cannot be deprived of his unquestionable right to do so by any private arrangement between the broker and his principal. The principal, therefore, cannot free himself from liability by paying over the purchase-money to the broker before the jobber has exercised his right to choose to which of the two he will look for payment, unless such a payment should be held to have been made in the usual course of business on the Stock Exchange. But the jobber is bound to elect whether he will proceed against the broker or against the principal within a reasonable time after discovering the latter; and the fact that the jobber has already pursued his remedy against the broker under the rules of the Stock Exchange, and has obtained a resolution of the Committee in his favour, or has received

¹ Rule 53.

² *Mortimer v. McCallan* (1840), 6 M. & W. 58; 9 L.J. Ex. 73.

³ *Armstrong v. Stokes* (1872), L.R. 7 Q.B. 598.

⁴ *Irvine v. Watson* (1880), 5 Q.B.D. 414; 49 L.J. Q.B. 531; 42 L.T. 810.

from the broker a part of the purchase-money, would undoubtedly be evidence that he had made his election, and would probably prevent him from subsequently enforcing his claim by law against the principal.

However, the Stock Exchange rules forbid a member to attempt to enforce by law claims arising out of Stock Exchange transactions against the principal of a fellow member without the consent of such member or of the Committee. And although this appears to be merely a disciplinary rule by which the contracts of non-members are not affected, and one which therefore, as a matter of law, does not prevent members from suing non-members,¹ as a matter of fact it has that effect, since any member who brings an action without having obtained the required permission renders himself liable to expulsion, and in practice the consent of the Committee is never given where the action would be for the sole benefit of the jobber.

But the rules cannot, and do not profess to prevent a non-member from bringing an action against a member.² All that they do is to offer him an alternative remedy, in the adjudication of the Committee on his case upon his undertaking in writing to abide by the Committee's award, and not subsequently to institute legal proceedings in respect of the same matter.³ But except where he has signed such a submission to arbitration the purchaser or vendor is at liberty to sue the jobber with whom the contract was originally made, unless before the time for completion arrives the jobber has freed himself from liability by putting another person in his place to carry out the contract.

Upon selling securities a jobber is bound to pay cash or its equivalent to the principal's broker, and is not entitled to set off against the money due from him to the principal debts due to him from the broker arising out of other trans-

Legal proceedings by jobbers.

Legal proceedings by principals.

Jobber's right of set-off against principal.

¹ *Mortimer v. McCallan* (1840), 6 M. & W. 58; 9 L.J. Ex. 73.

² *Merry v. Nickalls* (1872), L.R. 7 Ch. 733, 754.

³ Rule 55.

actions.¹ But it seems that if the jobber has already *bond fide* made payment to the broker on account of the claim in respect of which the principal is bringing his action, such payment, although made prematurely, will be a good answer to the principal, because the jobber has thereby put the broker in a position to carry out his contract with his principal.² It is the custom of the Stock Exchange, where there have been cross purchases and sales of the same description of securities between brokers and jobbers, to set off such purchases and sales against each other at the settlement, and thus to save unnecessary passing of shares and money.³ A majority of the Court, in the case of *Grissell v. Bristowe*, when that case was before the Court of Common Pleas,⁴ considered that the custom was unreasonable and unenforceable against the broker's principal. But Byles, J., dissented from this view, and although the point was not noticed in the Exchequer Chamber,⁵ it is submitted that the opinion of the single judge was correct, and that such a set-off would be held to be good against the principal were the question to arise again.

¹ In ordinary cases of agency the buyer may set-off against an undisclosed principal a debt due from the agent, provided that in making the contract the buyer was induced by the conduct of the principal to believe, and did in fact believe, that the agent was selling on his own account: *Cooke v. Eshelby* (1887), 12 App. Cas. 271; 56 L.J. Q.B. 505; 56 L.T. 673; 35 W.R. 629. But it would seem that in transactions on the Stock Exchange a jobber can never take advantage of this rule, because, since he knows that the selling broker is in all probability selling on behalf of a principal, he is put upon inquiry as to the character in which the broker is actually selling; and if he neglects to make any inquiry he will not afterwards be heard to say that he believed the broker to be selling on his own account: *Ibid.*

² *Fish v. Kempton* (1849), 7 C.B. 687; 18 L.J. C.P. 206. See also *Crossley v. Magniac* [1893], 1 Ch. 594; 67 L.T. 798; 41 W.R. 598; *Blackburn v. Mason* (1893), 9 T.L.R. 286.

³ (1868), L.R. 3 C.P. 112; 37 L.J. C.P. 89; 17 L.T. 564; 16 W.R. 248.

⁴ This is, of course, only necessary in the case of securities which do not pass through the Clearing House.

⁵ (1868), L.R. 4 C.P. 36; 38 L.J. C.P. 10; 19 L.T. 390; 17 W.R. 123.

The contract into which a jobber enters is not an absolute undertaking to take or deliver securities himself, but a conditional undertaking that he will do so if he cannot before settling-day find some one to do it in his place.¹ And he further undertakes, where he is purchasing, that he will indemnify the vendor against all liabilities which the latter may incur through his name remaining on the register, until a purchaser is found.¹

Nature
of jobber's
contract.

But the jobber's liability is not discharged by merely obtaining a substitute. He is "not required to give the name of a person merely, but to give the name of a person *as the purchaser*, meaning, of course, a person capable of becoming the purchaser, whose contract will be binding and enforceable against him." The substitute must in fact be a person both competent and willing to contract. And therefore a jobber who passes the name of an infant, a lunatic, or other person who is incapable of contracting, or of some one who has not authorized the passing of his name either at all or for the particular date in question, does not thereby relieve himself from liability,² though in the last case the person whose name is passed may of course ratify the contract subsequently to its making.³

But while the jobber by implication undertakes that the purchaser whose name he supplies shall be one who is competent and willing to contract, he does not undertake that he shall also be capable of performing the contract;⁴ and against the possibility of the purchaser's failing to perform the contract the vendor must protect himself, if he thinks it necessary to do so, by his own diligence in making inquiries

No
guarantee
of perform-
ance by
purchaser.

¹ *Nickalls v. Merry* (1875), L.R. 7 H.L. 530; 45 L.J. Ch. 575; 32 L.T. 623; 23 W.R. 663.

² *Nickalls v. Merry*, *supra*, overruling *Rennie v. Morris* (1871), L.R. 13 Eq. 203; 41 L.J. Ch. 321; 25 L.T. 862; *Mazted v. Paine* (1869), L.R. 4 Ex. 81; 38 L.J. Ex. 41; 20 L.T. 34; *Mazted v. Morris* (1869), 21 L.T. 535; *Nickalls v. Eaton* (1871), 23 L.T. 689; 19 W.R. 172; *Dent v. Nickalls* (1873), 29 L.T. 536; 22 W.R. 218; affirmed, 30 L.T. 644.

³ *Mazted v. Morris* (1869), 21 L.T. 535.

⁴ *Mazted v. Paine* (1871), L.R. 6 Ex. 132; 40 L.J. Ex. 57; 24 L.T. 149; 19 W.R. 527; *Nickalls v. Merry*, *supra*.

as to the purchaser's capabilities, or by special terms in the contract. To give time for making such inquiries a delay of ten days is allowed to the vendor of inscribed securities¹ between the time of receiving the ticket containing the purchaser's name and the time of making delivery; and at any time before the expiration of the ten days the vendor may make any objection he desires to the name which has been passed to him.² Should the name be rejected, it is passed back to the issuer of the ticket, who is obliged to meet the objection. If the vendor is not then satisfied he may appeal to the Committee of the Stock Exchange, who will consider the validity of the complaint, and will, if necessary, order another name to be given. An objection thus made will be upheld when the name passed is that of a foreigner residing abroad;³ though if the foreigner were desirous of purchasing, the difficulty might no doubt be overcome by procuring some responsible person in this country to join with him in a covenant to secure the vendor against any further liability in respect of the shares.⁴ This question would only be likely to arise where there was a continuing liability on the shares, for in the case of fully-paid shares it would be unimportant to the vendor to know who the transferee was when once he had received the purchase-money.

¹ A delay in delivery is, of course, unnecessary in the case of bearer securities, as there is no outstanding liability.

² See Rule 105, which allows ten days for delivery before the purchaser can buy in.

³ *Allan v. Graves* (1870), L.R. 5 Q.B. 478; 39 L.J. Q.B. 157; 22 L.T. 677; *Goldsmidt v. Jones* (1870), 22 L.T. 220; 18 W.R. 513. It seems to be doubtful whether an objection could now be taken to a name on the ground that it is that of a married woman, since the rule affirmed in *Stogden v. Lee* [1891], 1 Q.B. 661; 60 L.J. Q.B. 669; 64 L.T. 494; 39 W.R. 467, by which the plaintiff in an action against a married woman was under the obligation to prove that she had, at the date of the contract, some separate estate in respect of which she could reasonably be presumed to have contracted, appears now to be no longer law owing to the provision of the Married Woman's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.

⁴ *Goldsmidt v. Jones*, *supra*.

After thirteen clear days have elapsed from the delivery of the ticket without delivery of the securities purchased, and without any attempt being made on the part of the purchaser to buy in against the vendor, the jobber is released from liability unless the buying-in was delayed at his request.¹ This entirely closes the jobber's liability so far as the purchaser's ability to perform the contract is concerned, unless an allegation of fraud or wilful misrepresentation is made against the jobber, for on no other ground will the Committee subsequently entertain any objection or an application to annul the bargain.² The limit, however, relates solely to the purchaser's ability to perform the contract; where the purchaser is incompetent to contract at all owing to some legal disability, such as infancy, or where he has not authorized the making of the contract, the jobber is not discharged from liability.³ In such a case the Committee has been known to order the various parties to the transaction to indemnify one another after the lapse of as long a period as two years from the passing of the supposed purchaser's name.⁴

Discharge
of jobber's
liability.

Where the jobber has passed the name of an incompetent party he is compellable to indemnify his vendor against any loss occasioned by his failure to give a good name, and he may then in turn proceed against the person who passed the name to him.⁵ He cannot, however, prevent the vendor from asserting his claim against him on the ground that there is another person who is liable to pay the money, and who will ultimately be compelled to pay, and that there-

Indemnity
by and
to jobber
where
name of in-
competent
party is
passed.

¹ Rules 103, 106.

² Rule 59.

³ *Nickalls v. Merry*, *supra*. See too the two actions of *Maxted v. Paine*—1st action (1869), L.R. 4 Ex. 81; 38 L.J. Ex. 41; 20 L.T. 34; 2nd action (1869), L.R. 4 Ex. 203; 38 L.J. Ex. 129; S.C. (1871), L.R. 6 Ex. 132; 40 L.J. Ex. 57; 24 L.T. 149; 19 W.R. 527.

⁴ See *Cupper's Case* cited in *Nickalls v. Merry*, L.R. 7 H.L., at p. 545.

⁵ *Peppercorne v. Cleuch* (1872), 26 L.T. 656. See too *Queensland Investment Co. v. O'Connell and Palmer* (1896), 12 T.L.R. 502.

fore the vendor should proceed directly against such person.¹

When in the winding up of a company a vendor is compelled to pay calls owing to the name of an incompetent party having been passed to him and registered, the jobber will be liable to indemnify him, and this liability will not be affected by a compromise arranged between the liquidator of the company and the vendor if the object of the compromise was to keep the jobber's liability alive. In *Heritage v. Paine*² the name passed to the vendor and registered was that of an infant. In the winding up of the company the infant's name was removed from the register and the vendor's replaced, and he in consequence became liable for calls to the amount of £5400. An agreement was entered into between the liquidator of the company and the vendor for a compromise of the latter's liability in consideration of the payment to the liquidator of £2000, the transfer of the shares to him, and an authority to him to use the vendor's name in all proceedings against the jobbers. The liquidator was to retain all moneys recovered from the jobbers, and to apply them in recouping the vendor the £2000 paid by him and in satisfying the liability on the shares, and the vendor was to be released from all further liability after proceedings were over. The jobbers did not dispute their liability, but they contended that the release comprised in the agreement enured for their benefit so as to make the £2000 payable thereunder by the vendor the measure of their liability either to the vendor or the liquidator. But it was held that the object of the agreement being to keep up and enforce the jobbers' liability, they could not set it up without giving effect to all its provisions, and consequently that it did not operate as a release in their favour, or relieve them in any degree from their liability to pay the full amount which was due on the shares.

It was at one time considered that until the jobber had

¹ *Nickalls v. Eaton* (1871), 23 L.T. 689; 19 W.R. 172.

² (1876), 2 Ch. D. 594; 45 L.J. Ch. 295; 34 L.T. 947.

obtained the registration of the name of the person whom he had substituted for himself to perform the contract, he had not done what was necessary to discharge his liability.¹ But it was subsequently decided that this view was incorrect, and that as soon as a jobber had passed the name of a responsible person and no objection had been taken within the time limited by the rules, he was, by the custom of the Stock Exchange, discharged from liability, and that there was no implied agreement on his part, nor obligation upon him, to see that the name of the ultimate purchaser had been registered.² "The contract of the jobber," said Lord Cairns, L.C., in *Coles v. Bristowe*,³ "is that at the settling-day he will either take the shares himself, in which case he would, of course, be bound to accept and register a transfer and to indemnify, or he will give the name of one or more transferees, names to which no reasonable objection can be taken, who will accept and pay for the shares. The jobber may perform either alternative; and if, electing to perform the latter alternative, he sends in names which are accepted, and to which transfers are executed, and those transfers are taken and paid for by the transferees or their brokers, the jobber is then and at that stage relieved from further liability, and the liability to register and indemnify is shifted to the transferees."

No obligation upon jobber to obtain registration of purchaser's name.

Moreover, when the vendor has executed the transfers to the ultimate purchaser and has received the purchase-money from him or from the jobber, he has put it out of his power to perform his share of the original contract with the jobber by transferring the shares to him, and the consideration for the jobber's contract is consequently at an end.⁴ And

¹ *Grissell v. Bristowe* (1868), L.R. 3 C.P. 112; 37 L.J. C.P. 89; 17 L.T. 564; 16 W.R. 248; *Coles v. Bristowe* (1868), L.R. 6 Eq. 149; 18 L.T. 459; 16 W.R. 690.

² *Grissell v. Bristowe* (1868), L.R. 4 C.P. 36; 38 L.J. C.P. 10; 19 L.T. 390; 17 W.R. 123; *Coles v. Bristowe* (1868), L.R. 4 Ch. 3; 38 L.J. Ch. 81; 19 L.T. 403; 17 W.R. 105; *Sheppard v. Murphy* (1868), 16 W.R. 948, 953.

³ L.R. 4 Ch., pp. 11, 12.

⁴ *Grissell v. Bristowe*, L.R. 4 C.P., at p. 50.

further, by the execution of the transfers the vendor adopts the new contract with the purchaser's liability under it, in substitution for the original contract and the jobber's liability. In the case cited above, the Lord Chancellor added:¹ "It may be well to repeat, in order to prevent misapprehension, that in our opinion the liability of the defendants (*i.e.* the jobbers) continued entire and unbroken until there was an acceptance by the plaintiff, by the preparation and execution of the transfers, of the names sent in by the defendants as purchasers, and until there was an acceptance of the shares by the purchasers through the delivery to their brokers of, and payment by their brokers for, the transfers and certificates of the shares. It is difficult to see how this liability can continue after the transfer, as in the present case, of the shares to other persons. If A. be trustee of shares for B., and if he require B., as the beneficial owner, to indemnify him against calls or other liabilities, B. has clearly the right to say that he will assume the whole liability and ownership, legal as well equitable, and may require A. to transfer to him the shares in respect of which the liability arises. But if such a requisition were made to the plaintiff in this case, he could not comply with it, for he has transferred the shares and handed over the certificates to other persons as purchasers for value. Lord Cranworth's observations in *Shaw v. Fisher*² apply forcibly to this part of the case: 'The plaintiff cannot make a title to these shares to Mr. Fisher, because he has already assigned them to Mr. Carmichael. Then it is said that Mr. Carmichael has not completed. What does that signify? As far as Mr. Shaw is concerned he has executed the deed, and there is nothing to prevent Mr. Carmichael at any time from coming with the deed and registering it. Therefore it is plain that the plaintiff cannot now make a title.'"

It may at first sight seem hard that a principal should be thus compelled to take another purchaser or vendor in substitution for the jobber with whom he made the original

¹ *Coles v. Bristowe*, L.R. 4 Ch., at p. 12.

² (1855), 5 De G. M. & G. 596, 608.

contract. But on consideration it will be seen that there is really no hardship nor injustice in the rule. For supposing that the person who contracted with the jobber is a seller, all that he desires is to find a purchaser who will accept the shares, pay the purchase-money, and relieve him from further liability. If a purchaser is found, as to whom the seller's broker is satisfied, the seller has obtained all that he required. For in practice a seller does not limit his broker's authority to selling exclusively to a jobber, nor does he rely upon the credit of the jobber, whose name even is usually unknown to him. But he is generally content to depend upon the probability that the purchaser with whom he is brought into contact will prove to be a man of substance, and he has it in his power to protect himself against loss by insisting on registration in the name of the new purchaser as part of the jobber's contract. On the other hand, it would be a considerable hardship on the jobber if, for the small profit realized upon the re-sale, he were to be held to be responsible in respect of the non-fulfilment of any part of the contract after the matter has passed out of his hands through the assent of the vendor to complete the transaction with the substituted purchaser, or for loss occasioned by the laches of the vendor in parting with the shares without insisting on the execution of the transfer by the purchaser.

If the vendor desires to obtain further protection than is given by the terms which are usually implied in the jobber's contract, he is obliged to make a special agreement with the jobber that the latter will guarantee registration in the name of the substituted purchaser, and to pay at a higher rate for the extra risk which the jobber undertakes. The jobber who has contracted with a guarantee of registration as part of the contract, is not free from liability until registration of the purchaser's name has actually taken place, and if the purchaser fails to register, the jobber will himself be liable to indemnify the vendor against all liability incurred in consequence of such failure.¹

"Registration guaranteed."

¹ *Cruse v. Paine* (1869), L.R. 4 Ch. 441; 38 L.J. Ch.225; 17 W.R. 1033.

Fully paid
shares, etc.

Where there is no further liability on the securities, as in the case of fully-paid shares, the purchaser's or vendor's object is entirely confined to obtaining the securities or the purchase-money, as the case may be. This object is effected either by an action or by the Stock Exchange remedies of buying in and selling out. Where the latter remedies are adopted the broker must take advantage of them within the times allowed by the rules for the purpose,¹ and if he delays beyond the prescribed period the right to claim against intermediate parties will be lost, and the principal's remedy will then consist of an action for negligence against his broker.

SECTION IV.—VENDOR AND PURCHASER.

Nature
of contract
between
vendor and
purchaser.

As we saw in the last section, the discharge of the jobber is contemporaneous with and dependent upon the formation of a new contract between the original vendor and the purchaser whom the jobber introduces as a substitute for himself. Although both the parties to this contract are probably non-members of the Stock Exchange, their contract will be interpreted according to the rules of the market in which it is made. The peculiarities of the contract were thus described by Lord Romilly, M.R., in *Hodgkinson v. Kelly*.² "It is not, as has been supposed, that the seller of shares constitutes an agent to find out and enter into a contract with some particular buyer, or, on the other hand, that the buyer does the same as to the seller, but both parties agree to be bound by the usage of the Stock Exchange, which binds both parties from the beginning, but which leaves each of the parties to the eventual contract ignorant of the other till the day arrives and the instrument of transfer is executed; . . . it is, in my opinion, an engagement entered into by A. on one side, and E. on the other, that through the instrumentality of certain other persons, whoever they may be, certain shares shall

¹ See Remedies.

² (1868), L.R. 6 Eq. 496, 502.

be sold and bought, and they undertake to complete the contract with the person, whoever he may be, who buys on one hand and sells on the other."

Immediately upon the acceptance by the vendor of the name passed to him by means of the ticket, and of the acceptance of the transfer and payment of the purchase-money by the purchaser, this undertaking comes into force. The intermediate parties are discharged from liability, and a mutual liability is established instead between the original vendor and the ultimate purchaser.¹ Privity of contract is thereupon established between these parties, and they are enabled to sue, and otherwise to deal with, one another precisely as if the contract had originally been concluded between them.² "It appears to me," said Mellish, L.J., in *Merry v. Nickalls*,³ "that when the broker of the original vendor, having received the ticket, fills in the transfer, and gets his principal to execute the transfer to the person whose name is on the ticket, and then takes it to the broker whose name is on the ticket, and he accepts it and pays the purchase-money, then a perfect privity of contract is established between the vendor and the ultimate purchaser."

The contract thus made is not invalidated by a call being made subsequently to the date of the contract, nor by the fact that proceedings for winding up the company have, unknown to the purchaser, already been taken before that date.

In the first action of *Hawkins v. Maltby*,⁴ Sir W. Page Wood, V.C., considered that the fact that a call had been made did operate in discharge of the contract. His decision, however, was reversed on appeal,⁵ though it was held

Privity
of contract
estab-
lished.

Contract
not invali-
dated by
calls or
winding-
up pro-
ceedings.

¹ *Bowring v. Shepherd* (1871), L.R. 6 Q.B. 303; 40 L.J. Q.B. 129; 24 L.T. 721; 19 W.R. 852.

² *Wynne v. Price* (1849), 3 De G. & Sm. 310; *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247; *Hawkins v. Maltby* (1867), L.R. 3 Ch. 188; 37 L.J. Ch. 58; 17 L.T. 397; 16 W.R. 209; *Grisell v. Bristowe* (1868), L.R. 4 C.P. 36; 38 L.J. C.P. 10; 19 L.T. 390; 17 W.R. 123; *Sheppard v. Murphy* (1868), 16 W.R. 948.

³ (1872), L.R. 7 Ch. 756.

⁴ (1867), L.R. 4 Eq. 572; 37 L.J. Ch. 58; 17 L.T. 51; 15 W.R. 1075.

⁵ (1867), L.R. 3 Ch. 188; 37 L.J. Ch. 58; 17 L.T. 397; 16 W.R. 209.

that the contract as alleged was not proved. And in a subsequent action between the same parties,¹ the same Vice-Chancellor, then Lord Hatherley, admitted that his decision in the original action was under the circumstances erroneous.

In *Rudge v. Bowman*,² the defendant agreed to buy from the plaintiff shares in a company as to which, unknown to the defendant, an order for winding-up had already been made under the Companies Act, 1862. The 153rd section of that Act provides that when a company is being wound up under the supervision of the Court every transfer of shares made between the commencement of the winding-up and the order for winding-up shall be void, unless the Court otherwise orders. It was held that the contract was good, as the section did not avoid a *contract* for the sale of shares made in the interval, nor prevent a transfer from being made after the order for winding-up.

When the new contract is concluded, the parties who are brought together undertake by implication to perform the same duties and to accept the same rights to and from one another, as they undertook to and accepted from the jobber.

Vendor's
under-
taking.
(i.) As to
execution
of transfer,
etc.

(ii.) As to
obtaining
director's
consent to
transfer.

The vendor, on the one hand, undertakes to deliver the securities and to execute the transfer within the time which is allowed by the rules, and to do everything else that is reasonable and necessary to enable him to carry out the bargain. It was at one time thought that, where the consent of the directors of a company was required for the transfer of shares in a company, it was part of the vendor's contract that he would obtain the necessary consent.³ But the mass of authority inclines to the view that the contract of the vendor, whether he be a member or a non-member, is to be interpreted in accordance with the rules of the Stock Exchange, and that when so interpreted the vendor does not undertake to obtain the directors'

¹ (1869), L.R. 4 Ch. 200; 38 L.J. Ch. 313; 20 L.T. 335; 17 W.R. 557.

² (1868), L.R. 3 Q.B. 689; 37 L.J. Q.B. 193.

³ *Wilkinson v. Lloyd* (1845), 7 Q.B. 27; 14 L.J. Q.B. 165; *Birmingham v. Sheridan* (1864), 33 Beav. 660; 10 L.T. 256; 12 W.R. 658.

consent, but that the purchaser must himself obtain it, and that the contract is binding and enforceable against the purchaser, whether such consent is obtained or not.¹

There is not any implied undertaking on the part of the vendor that the company shall be a going concern at the time that the purchaser buys, and the purchaser must take his chance of any change in the solvency of the company, and of the consequences of such change, between the making of the contract and the day which is agreed upon for its performance.² The vendor is, however, responsible for the genuineness of securities and the regularity of documents delivered, until the purchaser has had a reasonable time allowed him to obtain verification and registration.³ The time which would be deemed reasonable for the purpose of these rules would, no doubt, vary according to the size of the company and the nature of the documents requiring registration. Rule 75 seems to point to six weeks as being the longest period that would, under any circumstances, be deemed to be reasonable by the Stock Exchange itself. But as there is no express provision on the point, and the question of what is a reasonable time must always be a question of fact dependent upon the circumstances of the particular case, it is conceivable that cases might arise in which the courts would consider that even six weeks was too short a time for a proper investigation of the genuineness of documents.

From the time of the completion of the contract until the transfer has been accepted by the directors, or the shares have been registered in the name of the new holder, the latter is merely equitable owner, the legal ownership being in the vendor, who is accountable for any rights accruing

(iii.) As to solvency of company.

(iv.) As to genuineness of documents.

Vendor a trustee for purchaser till completion of contract.

¹ *Wynne v. Price* (1849), 3 De G. & Sm. 310; *Remfry v. Butler* (1858), E.B. & E. 887; 6 W.R. 682; *Stray v. Russell* (1859), 1 E. & E. 888; 29 L.J. Q.B. 115; 1 L.T. 162, 443; 8 W.R. 240; *Evans v. Wood* (1867), L.R. 5 Eq. 9; 37 L.J. Ch. 159; 17 L.T. 190; 16 W.R. 67.

² *Crabb v. Miller* (1871), 24 L.T. 219; affirmed, 24 L.T. 892; 19 W.R. 882; *Bowering v. Shepherd* (1871), L.R. 6 Q.B., at p. 323; *Neilson v. James* (1882), 9 Q.B.D., at p. 553.

³ See Rules 92, 127.

in respect of the shares.¹ Where, therefore, dividends are declared on the shares subsequently to the date of the contract, the purchaser is entitled to them.² And where new shares or stock are issued in right of old, the purchaser of the original shares or stock is entitled to the new, provided that he specially claims them in writing within a reasonable time.³ It seems that the purchaser will not have exceeded a reasonable time, even though he neglects to assert his right until the original shares or stock have been quoted "ex new."⁴

If, owing to neglect on the part of the purchaser to have his name registered, the vendor's name remains on the register, and in order to save himself from liability, the vendor re-sells the shares, he is accountable to the purchaser for the price which he receives.⁵

Purchaser's
under-
taking.
(i.) As to
paying for
securities,
etc.

The purchaser, on the other hand, is bound to accept the transfer and to pay for the securities,⁶ and if at this stage he breaks his contract by refusing to accept the transfer or to pay the purchase-money, the securities will be sold out against him, and he will be obliged to pay any loss thereby incurred; or if they happen to be shares in an insolvent company, and, in consequence, unsaleable, the amount which he will be obliged to pay as damages will be the same as if

¹ The purchaser's legal title is acquired either (1) upon acceptance of the transfer by the company (*Roots v. Williamson* (1888), 38 Ch. D. 485; 57 L.J. Ch. 995; 58 L.T. 802; 36 W.R. 758), or (2) upon registration in the case of those companies in which the transferee's title is not complete until after registration (*Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20; 55 L.J. Q.B. 169; 54 L.T. 389; 34 W.R. 662; *Nanney v. Morgan* (1887), 37 Ch. D. 346; 57 L.J. Ch. 311; 58 L.T. 238; 36 W.R. 677).

² Rule 92; *Black v. Homersham* (1878), 4 Ex. D. 24; 48 L.J. Ex. 79; 39 L.T. 671; 27 W.R. 171.

³ Rules 107, 126.

⁴ *Stewart v. Lupton* (1874), 22 W.R. 855.

⁵ *Beckitt v. Bilbrough* (1850), 8 Hare, p. 188.

⁶ *Paine v. Hutchinson* (1868), L.R. 3 Ch. 388; 37 L.J. Ch. 485; 18 L.T. 380; 16 W.R. 553. An acceptance by the purchaser's brokers on his behalf is sufficient to bind him. *Bowring v. Shepherd* (1871), L.R. 6 Q.B. 309; 40 L.J. Q.B. 129; 24 L.T. 721; 19 W.R. 852.

he had completed the contract, and had been obliged to indemnify the vendor.

The Stamp Act, 1815,¹ requires that the amount of consideration inserted in the transfer, and on which the duty payable is calculated, shall be the sum paid by the ultimate purchaser. It is evident that this sum may be either higher or lower than that actually received by the vendor. A note is generally appended to the transfer, explaining this apparent discrepancy, and the vendor is not, in that case, justified in refusing to sign the transfer on the ground that he would thereby be admitting the receipt of a larger sum than he has in fact received. But it appears to be doubtful whether he could be compelled to execute the transfer if such a note were not attached.² Nor will the purchaser be justified in refusing to duly execute on the ground that the transfer has been invalidated, after leaving his possession, by the correction of unimportant clerical errors in, for instance, the spelling of the parties' names.³

If the purchaser accepts the transfer and pays the purchase-money, it becomes his duty to execute the deed, and to have it registered.⁴ But sec. 26 of the Companies Act Amendment Act, 1867,⁵ now provides that on an application by the vendor, the company shall register the name of the transferee, in the same manner and subject to the same conditions as if the application had been made by the transferee. (ii.) To register.

If from any cause the purchaser fails to register, and the vendor is compelled to pay calls, or incurs other liabilities in consequence of his name remaining on the register, the purchaser is compellable to repay such calls,⁶ and to indemnify (iii.) To indemnify the vendor.

¹ 55 Geo. III. c. 184, Sched., Part I., *Conveyance*.

² *Mewburn v. Eaton* (1869), 20 L.T. 449; *Case v. McClellan* (1871), 25 L.T. 753; 20 W.R. 113.

³ *Mewburn v. Eaton*, *supra*.

⁴ *Wynne v. Price* (1849), 3 De G. & Sm. 310; *Morris v. Cannan* (1862), 4 De G. F. & J. 581; 31 L.J. Ch. 425; 6 L.T. 521; 10 W.R. 589.

⁵ 30 & 31 Vict. c. 131.

⁶ *Bayley v. Wilkins* (1849), 7 C.B. 886; 18 L.J. C.P. 273.

him not only against expenses actually incurred, but also against future liabilities.¹ This question of indemnification is a question which lies entirely between the vendor and the purchaser, and is one with which the company and the remaining shareholders are quite unconcerned.² It in no way depends upon whether the list of shareholders can be altered or not, the Court having power to order the purchaser to indemnify the vendor where they cannot order the rectification of the register.³

It was formerly held that where the vendor delivered a transfer which the purchaser failed to fill up or execute, there was not an implied promise by the purchaser to indemnify him against subsequent liabilities.⁴ But it is now settled that the purchaser is subject to this liability, although he has not executed the transfer,⁵ and although proceedings for winding up the company are commenced before the contract is completed.⁶ Nor does the liability to indemnify cease immediately upon registration of the purchaser's name; for if the company is wound up within twelve months of the transfer of the shares, the vendor will

¹ *Evans v. Wood* (1867), L.R. 5 Eq. 9; 37 L.J. Ch. 159; 17 L.T. 190; 16 W.R. 67; *Bowring v. Shepherd* (1871), L.R. 6 Q.B. 309; 40 L.J. Q.B. 129; 24 L.T. 721; 19 W.R. 852; *Hawkins v. Maltby* (1867), 3 Ch. 188; 37 L.J. Ch. 58; 17 L.T. 397; 16 W.R. 209; and see *Davis v. Haycock* (1869), L.R. 4 Ex. 373; 38 L.J. Ex. 155; 20 L.T. 954, where apparently it was only the form of the declaration which prevented the plaintiff from recovering.

² *Hawkins v. Maltby* (1867), L.R. 3 Ch., at p. 194; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq., at p. 500.

³ *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247.

⁴ *Humble v. Langston* (1841), 7 M. & W. 517; *Walker v. Bartlett* (1856), 17 C.B. 446.

⁵ *Walker v. Bartlett* (1856), 18 C.B. 845; 25 L.J. C.P. 263; *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496; 37 L.J. Ch. 837; 16 W.R. 1078; *Hawkins v. Maltby* (1869), 4 Ch. 200; 38 L.J. Ch. 313; 20 L.T. 335; 17 W.R. 557; *Crabb v. Miller* (1871), 24 L.T. 219; affirmed, 24 L.T. 892; 19 W.R. 882; *Fenwick v. Buck* (1871), 24 L.T. 274; 19 W.R. 597.

⁶ *Rudge v. Bowman* (1868), L.R. 3 Q.B. 689; 37 L.J. Q.B. 193; *Fenwick v. Buck*, *supra*; *Crabb v. Miller*, *supra*.

be placed as a contributory in Class B, and, in the event of his being compelled to pay, will be entitled to be reimbursed by the purchaser,¹ although the latter has in turn transferred the shares to another.²

If a person, who is not the actual purchaser, has so acted as to lead others to suppose that he is the purchaser, he will be precluded by his conduct from subsequently denying his liability, and will be compelled to indemnify the vendor. In *Shepherd v. Gillespie*,³ the plaintiff, through his broker, sold some shares in a company to the managing director of the company. By the instructions of the director, Gillespie's name was passed as that of the purchaser. Gillespie refused to execute the transfers, but did not inform the plaintiff of the facts. He retained the transfers until the company was wound up, and then handed them to the secretary for the purchase-money with which he had been debited. It was held that he could not then repudiate the contract, but must indemnify the plaintiff against calls, and pay the costs of the plaintiff and the director. So, too, the want of a sufficiently definite repudiation of a contract which violates the provisions of Leeman's Act, will prevent the apparent purchaser from subsequently denying his liability to the vendor.⁴

It is not always the person into whose name the transfer is made who is under liability to indemnify the vendor, but it is the person who is the actual purchaser, though he has chosen to take the transfer in the name of another. In such a case it is immaterial whether the transferee has executed the transfer or not. In *Torrington v. Lowe*⁵ it was held by the Court of Common Pleas that when once the transfer had been executed it was not open to the vendor to claim

Indemnity where purchaser takes transfer in another's name.

Torrington v. Lowe.

¹ *Roberts v. Crowe* (1872), L.R. 7 C.P. 629; 41 L.J. C.P. 198; 27 L.T. 238.

² *Nevill's Case* (1870), L.R. 6 Ch. 43, at p. 46; *Kellock v. Enthoven* (1873), L.R. 9 Q.B. 241; 43 L.J. Q.B. 90; 30 L.T. 68; 22 W.R. 322.

³ (1868), L.R. 3 Ch. 764; 38 L.J. Ch. 67; 19 L.T. 196; 16 W.R. 1133.

⁴ *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701.

⁵ (1868), L.R. 4 C.P. 26; 38 L.J. C.P. 121; 19 L.T. 316; 17 W. R. 78.

indemnity against any one but the person named in the transfer, as no one else was fixed with privity of contract. The result of this was that the purchaser of shares which were not fully paid up, by taking a transfer in the name of an unsubstantial person, might escape from liability for future calls.

But this view did not apparently obtain a very general or a very lengthy recognition even among the common law judges. For in 1869, in the case of *Maxted v. Paine*, it was suggested by several of the learned judges that the vendor might have an action against the real purchaser, although he was not entitled to insist that the purchaser should take the transfer in his own name.¹

*Castellan
v. Hobson.*

In the year following the decision in *Maxted v. Paine* the question came before the Court of Chancery in the case of *Castellan v. Hobson*.² In that case the defendant had bought shares of the plaintiff through his broker and had given the name of one of his workmen as transferee. The plaintiff duly executed the transfer to the workman and received the purchase-money, but owing to the winding-up of the company the transfer was not registered, and the shares remained in the plaintiff's name. It was held that the defendant, as the real purchaser and equitable owner of the shares, was bound to indemnify the plaintiff against liability in respect of them.

*Brown v.
Black.*

A similar decision was given by the same court three years later in the case of *Brown v. Black*;³ and now, since the amalgamation of legal and equitable principles by the Judicature Act of 1873, there can be no doubt that were the question to arise again the decision would be in accordance with the two later cases.

Indemnity
in case of
death or
bank-
ruptcy.

In case of the vendor's death the right to be indemnified

¹ See L.R. 6 Ex., p. 151.

² (1870), L.R. 10 Eq. 47; 39 L.J. Ch. 490; 22 L.T. 575; 18 W.R. 731. See too *Nickalls v. Furneaux*, W.N. 1869, 118. The minutes of decree in *Castellan v. Hobson* followed those in *Evans v. Wood* (1867), L.R. 5 Eq. 9.

³ (1873), L.R. 15 Eq. 363; 42 L.J. Ch. 397; 28 L.T. 256; 21 W.R. 457; affirmed, L.R. 8 Ch. 939; 42 L.J. Ch. 841; 29 L.T. 362; 21 W.R. 892.

will pass to his personal representatives. Whether an indemnity is a claim provable in the purchaser's bankruptcy is perhaps still open to some doubt. Before the passing of the Bankruptcy Act, 1869, it was held by the courts to be incapable of proof,¹ but now such a claim would appear to fall within sec. 37 of the Bankruptcy Act, 1883,² and to be provable accordingly.

Where the purchaser of shares is an infant at the time of the purchase, he may repudiate the transaction either while still an infant or within a reasonable time after reaching full age, unless, perhaps, he has fraudulently misrepresented his age,³ or has received some benefit such as a payment of dividends.⁴ But if he fails to repudiate within a reasonable time, or if, after attaining twenty-one, he acts in a manner inconsistent with his right of repudiation, as, for instance, by receiving a dividend or paying a call, he cannot subsequently repudiate the contract,⁵ and the Infants Relief Act, 1874,⁶ does not release an infant from this liability.⁷ But if at the commencement of the winding-up of a company the infant is not precluded from repudiating, the right is not lost by mere delay.⁸

Not only may the infant himself repudiate the contract, but the company is entitled to reject an infant transferee and to place the transferor on the list of contributories,⁹

Repudiation by infant purchaser.

Repudiation of infant by company in winding-up.

¹ *Holmes v. Symons* (1871), L.R. 13 Eq. 66; 41 L.J. Ch. 59; 25 L.T. 628; 20 W.R. 195; *Kellock v. Enthoven* (1873), L.R. 9 Q.B. 241; 43 L.J. Q.B. 90; 30 L.T. 68; 22 W.R. 322.

² 46 & 47 Vict. c. 52, s. 37 (1).

³ *Wright v. Snowe* (1848), 2 De G. & S. 321.

⁴ *Hamilton v. Vaughan-Sherrin Electrical Engineering Co.* [1894], 3 Ch. 589; 63 L.J. Ch. 795; 71 L.T. 325; 43 W.R. 126.

⁵ *Lumsden's Case* (1868), L.R. 4 Ch. 31; 19 L.T. 437; 17 W.R. 65; *Ebbett's Case* (1870), L.R. 5 Ch. 302; 39 L.J. Ch. 679; 22 L.T. 424; 18 W.R. 394.

⁶ 37 & 38 Vict. c. 62.

⁷ *In re Yeoland's Consols* (1888), 58 L.T. 922.

⁸ *Hart's Case* (1868), L.R. 6 Eq. 512; 38 L.J. Ch. 85; 16 W.R. 1033; *Capper's Case* (1868), L.R. 3 Ch. 458; 16 W.R. 1002.

⁹ *Capper's Case*, *supra*; *Curtis's Case* (1868), L.R. 6 Eq. 455; 37 L.J. Ch. 629; 23 L.T. 287; 18 W.R. 957; *Weston's Case* (1870), L.R. 5 Ch. 614; 39 L.J. Ch. 753.

unless the right has been lost by the company's neglect.¹ But if the infant has transferred his shares to an adult and the company has accepted his transferee, the original transferor is, it seems, not liable to be placed even on the list of past members, although the company is wound up within twelve months of the transfer to the adult.² If a company seeks to place a person on the list of contributories as the holder of shares, and he objects, it is incumbent upon him to show that at some period there was on the register a transferee from him who could have been made liable at law in respect of the shares.³

Indemnity
of vendor
when pur-
chaser an
infant.

If a purchaser of shares takes a transfer in the name of an infant, the purchaser's name may be placed on the list of contributories in the place of that of the infant.⁴ But even in this case the company is entitled to place on the list the name of the transferor, who will, however, then be entitled to an indemnity from the actual purchaser.⁵

Sale under
power of
attorney—
stamping.

If the vendor is selling, or the purchaser is buying, on behalf of another under a power of attorney, the document must bear a stamp of the following amounts.

	s.	d.
(i.) Where the value does not exceed £20	5 0
(ii.) in any other case	10 0

A power of attorney for the receipt of dividends or interest on any stock:—

	s.	d.
(i.) Where made for the receipt of one payment only	1	0
(ii.) in any other case ... ..	...	5 0

¹ *Parson's Case* (1869), L.R. 8 Eq. 656.

² *Gooch's Case* (1872), L.R. 8 Ch. 266; 42 L.J. Ch. 381; 28 L.T. 148; 21 W.R. 181.

³ *Curtis's Case*, *supra*.

⁴ *Richardson's Case* (1875), L.R. 19 Eq. 588; 44 L.J. Ch. 252; 32 L.T. 18; 23 W.R. 467.

⁵ See p. 153, *supra*.

But a power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than £3, is exempt from the necessity of stamping. So, too, is an order, request, or direction under hand only from the proprietor of any stock to any company, or to any officer of any company, or to any banker, to pay the dividends or interest arising from any stock to any person therein named. Exemptions from stamping.

And further, a power of attorney for the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of dividends on the same stocks or funds.¹

¹ Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 81, and Sched. I., *Letter of Attorney*.

CHAPTER VIII.

COMPLETION OF THE CONTRACT.

i. Delivery—ii. Payment—iii. Settlement of Bargains.

Delivery. THE contract is completed by delivery of the securities on the one side, and the payment of the purchase-money on the other.¹

The delivery must be made within a time which is fixed by the rules; and if the securities are not duly delivered, the purchaser is entitled to avail himself of the right of buying in, which is the remedy afforded in such cases by the rules of the Stock Exchange.²

(i.) Of
Government,
etc., stocks.

English and Indian Government, and corporation securities which have been bought for a specified day, must be delivered on that day, and if it is not duly delivered the purchaser may buy it in.³ Stock receipts are obliged to be delivered by half-past three o'clock, or by a quarter-past three if the deliverer elect to deliver to the member with whom he dealt, and on Saturdays by half-past one o'clock.⁴ English and Indian Government, and corporation securities to bearer must be delivered before three o'clock on ordinary days, or before one on Saturdays.⁵

(ii.) Of
securities
deliverable
by deed of
transfer.

Securities deliverable by deed of transfer must be delivered within ten days of the last day of the settlement in

¹ The times specified in this chapter for delivery of and payment for securities apply only as between members of the Stock Exchange. Non-members will, of course, be obliged to make delivery or payment some time previously, in order to enable their brokers to comply with the rules on the subject.

² See *Remedies*, pp. 207-209, *post*.

³ Rule 83.

⁴ Rule 84.

⁵ *Ibid*.

which they were bought, or, in the case of companies which prepare their own transfers, within ten days of the earliest day on which a transfer can be procured. If not delivered within that time, they may be bought in against the seller.¹ Moreover, if delivery does not take place within thirteen days, the intermediate buyer from whom the seller received the ticket is discharged from liability, and the issuer of the ticket alone remains responsible for the payment of the purchase-money.²

In the case of bearer securities, on settling-day and the day following the delivery commences at ten o'clock. (iii.) Of bearer securities. Sellers who prefer to settle with their immediate buyers under Rule 68, are obliged to deliver before half-past twelve o'clock; while the holders of tickets passed under Rule 116, and of tickets passed in the Settlement Department, are allowed to deliver securities up to two o'clock on settling-days. Sellers of securities for which no tickets are passed are allowed up to half-past two to deliver stock.³ Where such securities have been bought for any period except settling-day, and have not been delivered by half-past two o'clock on that day, or, if the day be Saturday, by half-past twelve, the vendor is entitled to buy in, and the seller will be obliged to recompense him for any consequent loss.⁴ Securities bought for the settling-day, and not delivered by half-past two o'clock, may be bought in on the following or any subsequent day, after one hour's notice has been posted in the foreign market announcing the intended purchase.⁵ The holder of a ticket who allows two clear days to elapse in the case of bearer securities without delivering stock, releases his buyer from any loss in consequence of the declaration of any member as a defaulter.⁶

Securities deliverable by deed of transfer must be delivered at the price marked on the ticket; but a member cannot be compelled to take a ticket at a price not quoted in the official list during the account, unless the bargain was Delivery price of registered securities.

¹ Rule 105.² Rule 103.³ Rule 116.⁴ Rule 118.⁵ Ibid.⁶ Rule 119.

Amounts
deliverable
in American
securities.

made within the two preceding accounts.¹ In the absence of a special agreement, a purchaser of American securities cannot be compelled to accept delivery of a certificate of American shares of a larger amount than ten shares of \$100 each nominal capital, or twenty shares of \$50 each, or an American bond of a larger amount than \$1000.²

Delivery
of securities
subject to
drawings.

Delivery of bonds and other securities, which are subject to periodical drawing, cannot be claimed previous to the day for which they were bought; and bargains are obliged to be settled in securities which have not been drawn. If there is an erroneous delivery of drawn bonds, the purchaser must return them or their proceeds to the seller, if they still remain in his possession or under his control, on condition of his being recompensed for anything which he may lose by the transaction. But the Committee will not entertain any claim by a seller in respect of an erroneous delivery of drawn bonds unless it is made within nine calendar months.³

Unpaid
coupons and
stopped
bonds.

Foreign coupons sold at the exchange of the day and not paid, are returnable with all reasonable expenses.⁴ French and Egyptian securities which, under the law of those countries, have been officially notified as stopped, do not constitute a good delivery, but may be returned to the deliverer.⁵

Party
responsible
for genuine-
ness of
securities.

Where securities deliverable by deed of transfer are sold, the seller is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until the transferee has had a reasonable time in which to execute and duly lodge such documents for verification.⁶ Where bearer securities are delivered, the deliverer is responsible for the genuineness of such securities, and in case of his death, failure, or retirement from the Stock

¹ Rule 98. The price marked on the ticket may be less than that at which the seller contracted to sell, in which case he can claim the difference from his immediate buyer.

² Rule 114.

³ Rule 125.

⁴ Rule 124.

⁵ Rule 127. The notification in the case of French securities is by a publication in the "Bulletin Officiel."

⁶ Rule 92.

Exchange, the responsibility attaches to each member in succession through whose account the ticket for such securities has passed.¹

Every bond and scrip share is considered to be perfect, and to constitute a good delivery, unless it is much damaged or a material part of the wording is obliterated. If the purchaser has retained such damaged securities in his possession for more than eight days after delivery, the Committee will not take cognizance of any complaint in respect of them, unless it can be proved that the member who passed them was aware that they were imperfect.²

A delivery of forged securities³ is not a sufficient performance of the seller's contract to deliver, and in such a case the seller will be bound either to deliver genuine securities in the place of the forgeries, or to refund the purchase-money. In *Westropp v. Solomon*⁴ the seller delivered bonds which had been forged, though not to his knowledge. There were a considerable number of these forged bonds in the market, and the Committee of the Stock Exchange, on dealing with the matter subsequently to the date of the contract, passed a resolution compelling brokers who had sold any of the bonds to pay to their purchasers a price considerably in advance of that at which the defendant Solomon had actually sold. The broker Westropp paid, and brought an action against the defendant, claiming to be indemnified. But it was held that he was not entitled to recover the sum claimed, because in the ordinary course the principal was at the most bound to repay the amount which he had received on the sale, and a resolution of the Committee passed subsequently to the date of the contract could not affect the position of a non-member, since he could not be presumed to have

¹ Rule 127.

² Rule 128.

³ Forged certificates or transfers are ineffectual to give a title to the purchaser of the securities to which they relate, though the company may be estopped from denying their liability to the purchaser who has acted in the belief that such certificates or transfers were genuine. See pp. 228 and 233-4, *post*.

⁴ (1849), 8 C.B. 345; 19 L.J. C.P. 1.

contracted with reference to it. The case, however, supports the proposition that a vendor of forged securities is bound to refund the amount which he actually received for them, and he would now undoubtedly be liable under the rule which makes the seller responsible for the genuineness and regularity of the documents which he delivers.¹

Delivery
of stolen
bonds.

In *Raphael v. Burt*,² a question arose as to the validity of a delivery of bonds which had been called in for payment and had subsequently been stolen.³ It is usual for persons in England who desire to make remittances to America to buy, at an agreed price, bonds or coupons of railway companies payable in America, without specifying any particular bonds or coupons. Evidence was given in the course of the case that if default was made in the payment of the coupons in America the seller returned the money paid for them, but there was no evidence that payment of a bond had ever been refused. The bonds in question had been issued by the United States Government in 1865. They were payable to bearer, redeemable at the pleasure of the Government at any time after 1870, and payable at all events in 1885. When the Government wished to redeem any of the bonds, they publicly notified that specified bonds would be paid on presentation, and such bonds then became "called bonds." Some of these called bonds were stolen from the American

¹ Rule 92, *supra*; and see *Smith v. Reynolds* (1892), 66 L.T. 808.

² (1884), 1 C. & E. 325.

³ By sec. 100 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), which provides for the restitution of the property stolen where the thief is prosecuted to conviction, a special exemption is made in favour of "any valuable security" which "shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, taken, obtained, extorted, embezzled, converted, or disposed of." Of course, if the securities stolen consist of inscribed stocks or shares, a forged transfer will be necessary in order to dispose of them, as to which see note 3, p. 161, *supra*.

holders and were subsequently sold in England by the defendants to the plaintiffs. The bonds, on presentation, were claimed by the Manhattan Saving Institution, from whom they had been stolen, and the American Government refused to pay their value to the plaintiffs. In an action between the plaintiffs and the Manhattan Saving Institution, the American Court of Claims held that in law the bonds became matured on the day on which the holders had the right to receive payment of all which was then due on them, and that any one who accepted any of the bonds after that day took them as overdue paper with only such title as his vendor had, and with a liability to have his title disputed and impeached. The plaintiffs then claimed the return of their money from the defendants, and they were held to be entitled to it on the ground that there was an implied warranty of title on the sale.

The performance of the contract to deliver is complete as soon as the vendor has done all that is necessary to place the purchaser in the position of legal owner, and it is not necessary that there should be a delivery of any of the mere *indicia* of property. And so in *Hunt v. Gunn*,¹ where the defendant had contracted to deliver sixty shares to the plaintiff, and had directed the shares to be placed in the plaintiff's name, and the plaintiff had executed the deed of settlement in respect of them, it was held that the contract had been properly completed although no scrip certificates had been handed to the plaintiff.

When
delivery
complete

Payment for securities bought on the Stock Exchange is usually made by cheque, and cheques must be passed through the bankers' Clearing House, unless the drawer consent to their being otherwise presented. If a member requires bank notes instead of a cheque, without having stipulated for them at the time of the bargain, he is obliged to give notice to that effect before half-past eleven on the day of delivery.²

Payment.
Made by
cheque.

¹ (1862), 13 C.B. N.S. 226; 7 L.T. 277.

² Rule 67.

The Payer. A member is not obliged to take a reference for payment to a non-member, nor is he obliged to pay a non-member for securities which he has bought.¹ The seller is entitled to demand payment from the member who passed him the ticket, though the usual course is to receive payment direct from the purchaser's broker, and only to apply to the passer of the ticket where the issuer fails to pay.²

**For
registered
securities.**

In the case of securities deliverable by deed of transfer, the purchaser is obliged, in the event of the ticket being split, to pay for any portion of shares or stock that may be presented, provided that the number is not less than ten shares, nor the value less than £200.³ The purchaser may, however, refuse to pay for a transfer deed which is unaccompanied by coupons or certificates, unless it is officially certified that the coupons or certificates are at the office of the company.⁴ For where the vendor has a larger coupon or certificate than the amount of the stock or shares conveyed, or a single coupon or certificate representing stock or shares conveyed by two or more transfer deeds, the coupon or certificate must be forwarded to the offices of the company, when the secretary makes a memorandum of the deposit on the transfer deeds, which then constitute a valid delivery.⁵ In the case of such securities a member cannot be compelled to pay for them on the day of delivery, if they are delivered after half-past two on ordinary days, or after one o'clock on Saturdays.⁶

**For bearer
securities.**

The purchaser of bearer securities for a specified day must be prepared to pay for them by half-past two o'clock on that day, or by half-past twelve if the day be a Saturday, on pain of having the securities sold out against him, and

¹ Rule 66.

² Rule 68, and see also Rule 69.

³ Rule 101.

⁴ Rule 102.

⁵ In the case of stocks (not shares) which are dealt with by the Settlement Department, the duty of forwarding the coupons to the company's offices is undertaken by the Secretary to the Share and Loan Department; in all other cases the broker will forward the certificates direct to the offices: Rule 102.

⁶ Rule 110.

being compelled to defray any expense incurred by the vendor owing to such non-payment.¹

If securities are bought for the ordinary settling-day payment must be made on delivery, but the times for delivery vary as tickets have or have not been passed, and as sellers elect to settle with their immediate or with the ultimate buyers.² Securities presented on any other day than settling-day before half-past two, or before one o'clock on Saturdays, must be paid for on delivery.³

In the settlement of all bargains concluded on the Stock Exchange, dividends are accounted for at the net amount receivable after income-tax has been deducted. Where dividends are payable only abroad, the Secretary of the Share and Loan Department fixes a price for the coupons in sterling money. This price is posted in the Stock Exchange, and thereat all dividends are accounted for.⁴

Settle-
ment of
bargains.
Adjustment
of dividends.

Securities to bearer must be delivered on settling-day with the current coupon attached, unless the coupon is payable on settling-day when the securities are deliverable ex coupon. When the dividend is payable after settling-day, outstanding bargains in bearer securities are settled with the current coupon, and if the coupon is not handed over the buyer is entitled to demand its market value, which, in case of dispute, is fixed by the Secretary of the Share and Loan Department.⁵

Current
coupons.

A purchaser of registered and bearer securities is entitled to such new securities as may be issued in right of old, provided that he claim the same in writing from the seller within a reasonable time.⁶ Bargains in French rentes, in the absence of special agreement, are settled in certificates to bearer, and at a fixed exchange of twenty-five francs per pound sterling.⁷

Purchaser's
right to new
shares. :

Bargains
in French
rentes.

¹ Rule 115.

² Rule 116.

³ Rule 117.

⁴ Rule 73.

⁵ Ibid.

⁶ Rules 107, 126. And see *Stewart v. Lupton* (1874), 22 W.R. 855, and p. 150, ante.

⁷ Rule 123.

Adjustment
of interest
on railway
bonds, etc.

The bonds and debentures of railways in Great Britain, Ireland, and the East Indies, are so dealt in that the accrued interest up to the day for which the bargain is done, is paid by the purchaser; but bargains in bonds and debentures of colonial and foreign railways include the accrued interest in the price.¹

¹ Rule 129.

CHAPTER IX.

AVOIDANCE OF THE CONTRACT.

Section I. 7 Geo. II. c. 8—Sec. II. 8 & 9 Vict. c. 109, s. 18—Sec. III. Leeman's Act—Sec. IV. Fraud.

THE circumstances attending a contract for the purchase and sale of stocks and shares may be such that the courts will refuse to compel the parties to fulfil the obligations which they have undertaken. The obstacle to compulsory enforcement of the contract may be due to one of three causes—that the contract is (1) illegal and void, or (2) void merely, or (3) voidable. Since the repeal of Sir John Barnard's Act it can very rarely be that a contract made on the Stock Exchange is illegal. But contracts may still be void as falling within 8 & 9 Vict. c. 109, s. 18, or within Leeman's Act, or voidable on the ground that they have been induced by fraud on the part of one of the parties.

By or under the provisions of three statutes, certain classes of Stock Exchange transactions have at various times been declared to be null and void. Those statutes are Sir John Barnard's Act, 8 & 9 Vict. c. 109, and Leeman's Act, of which the two latter are still in force. The object of Sir John Barnard's Act was to render illegal and void transactions on the Stock Exchange which were in the nature of wagers. The effect of 8 & 9 Vict. c. 109, s. 18, was to render such contracts, not illegal, but void. Leeman's Act, on the other hand, avoided contracts for the sale of bank shares of which the numbers or the names of the registered proprietors were not stated in the contract note.

As between the original parties to the contract the effects of illegality and nullity are the same. No action can be

founded on the contract, and accordingly money won under it cannot be recovered by process of law. The distinction between illegality and nullity arises in cases in which rights have been acquired by persons who are not parties to the contract. Where a negotiable instrument has been given to secure the money due under an illegal contract, the defendant, in an action on the instrument by a third party into whose hands it has come, by showing that the consideration was illegal, will shift on to the plaintiff the burden of proving that he gave value for it, and, after showing that he gave value, the plaintiff may still be defeated by proof that at the time he took the instrument he knew of the illegality. But where the original contract is merely void, a negotiable instrument given to secure the payment of money under it, is founded not upon an illegal consideration, but upon no consideration at all, and therefore the defendant to an action on the instrument is obliged to show affirmatively that the plaintiff did not give consideration for it, and if the plaintiff gave consideration, it is immaterial whether he took with or without notice of the defect in the original contract.¹

SECTION I.—ILLEGALITY (7 GEO. II. c. 8).

Wagers
enforceable
at common
law.

7 Geo. II.
c. 8.

At common law, contracts of gaming and wagering were neither illegal nor void, but were enforced in the courts, provided that they were not contrary to public policy.² But in 1733 Sir John Barnard carried through Parliament the statute usually known by his name,³ with the object of placing a check upon excessive speculation. The statute rendered illegal all contracts for the payment of differences only, and contracts in the nature of options. It further

¹ *Fitch v. Jones* (1885), 5 E. & B. 238; 24 L.J. Q.B. 293; *Lilley v. Rankin* (1886), 56 L.J. Q.B. 248; 55 L.T. 814; *Blake v. Parker*, the *Times*, April 21, 1896.

² *Atherfold v. Beard* (1788), 2 T.R. 610; 1 R.R. 556; *Good v. Elliot* (1790), 3 T.R. 693; 1 R.R. 803; *Ramloll Thackoorseydass v. Soojumnull Dhondmull* (1848), 6 Moo. P.C.C. 300, 310.

³ 7 Geo. II. c. 8.

declared that actions could not be maintained for debts thus created, and that money actually paid should be recoverable. It did not, however, expressly avoid securities given for the payment of such debts.

But the effect of the statute was soon whittled down by the courts. It was held in a series of cases that its scope was limited to bargains in the funds of this country, and that where such bargains were made either in the funds of a foreign country, or in those of British dependencies,¹ or in the stocks and shares of incorporated companies,² or where there was a genuine intention to deliver, although the seller was not in actual possession of the securities at the time when he made the bargain,³ the contracts were not affected by the statute. Moreover, in *Sanders v. Kentish*⁴ a loan of stock with an undertaking to replace it at a future date was held not to be within the operation of the statute. In *Tenant v. Elliott*⁵ it was held that where A. had received money to the use of B. upon an illegal contract between B. and C., he could not be allowed to set up the illegality of the contract as a defence to an action brought by B. for money had and received. And in *Lyne v. Siesfield*,⁶ where the claim was for money paid for differences arising partly from contracts relating to the public funds, and partly from contracts

Judicial interpretation of the statute.

¹ *Henderson v. Bise* (1822), 3 Stark. 158; *Wells v. Porter* (1836), 3 M. & W. 722; 5 L.J. C.P. 256; 3 Scott, 141; 2 Bing. N.C. 722; *Oakley v. Rigby* (1836), 5 L.J. C.P. 256; 3 Scott, 194; 2 Bing. N.C. 732; *Elsuorth v. Coles* (1836), 2 M. & W. 31; 6 L.J. Ex. 50; *Robson v. Fallowes* (1837), 6 L.J. C.P. 105; 4 Scott, 43; 3 Bing. N.C. 392; *Morgan v. Pebrer* (1837), 6 L.J. C.P. 75; 4 Scott, 230; 3 Bing. N.C. 457.

² *Hewitt v. Price* (1842), 4 M. & G. 355; 11 L.J. C.P. 292; 5 Scott, N.R. 229; *Williams v. Trye* (1854), 18 Beav. 366; 23 L.J. Ch. 860.

³ *Oliverson v. Coles* (1816), 1 Stark. 496; *Mortimer v. McCallan* (1840), 6 M. & W. 58; 9 L.J. Ex. 73; *S.C.* 7 M. & W. 20; 10 L.J. Ex. 136; 9 M. & W. 636; 11 L.J. Ex. 429; *Hibblewhite v. McMorine* (1839), 5 M. & W. 462; 8 L.J. Ex. 271, overruling the dictum of Lord Tenterden to the contrary in *Bryan v. Lewis* (1826), Ry. & Moo. 386. And see *Nicholson v. Gooch* (1856), 5 E. & B. 999; 25 L.J. Q.B. 137.

⁴ (1799), 8 T.R. 162.

⁵ (1797), 1 B. & P. 3.

⁶ (1856), 1 H. & N. 276.

relating to railway shares, and it was pleaded in defence that such contracts were contrary in part to 7 Geo. II. c. 8, and in part to 8 & 9 Vict. c. 109, it was held that the plea being no answer as to the money paid in respect of the contracts relating to the railway shares, was wholly bad, and was not made good in respect of the losses on the contracts relating to the public funds by sec. 75 of the Common Law Procedure, 1852. In *ex parte Bulmer*,¹ however, where a promissory note had been given for money due on Stock Exchange transactions, some of which were illegal under this statute, in the bankruptcy of the giver of the note proof was restrained to that portion of the consideration which did not arise from illegal transactions. In *Brown v. Turner*² the statute was declared to include and make void gaming transactions in omnium. And in *Child v. Morley*,³ where a broker contracted for the sale of stock at a future day by the authority of a principal who afterwards refused to complete, it was held that the broker could not, after paying the amount of the loss occasioned by the failure to carry out the contract, maintain an action against his principal on an implied assumpsit.

Rights
of third
parties.

Though the effect of these decisions was to destroy the efficacy of the statute to a very large extent, still, where it could be shown that a case came within it as thus interpreted, there was, of course, a complete defence to any action as between the original parties to the contract. Questions, however, arose as to the rights of third parties resulting from such contracts. In *Faikney v. Reynous*,⁴ in 1767, Lord Mansfield held that where a bond was given to secure the repayment of money advanced by the holder to pay differences arising out of these illegal transactions, the holder was entitled to recover. For this purpose he drew a distinction between cases in which the subject of the contract was

¹ (1807), 13 Ves. 313.

² (1798), 7 T.R. 630; 2 Esp. 632.

³ (1800), 8 T.R. 610. See also *Clayton v. Dilly* (1811), 4 Taunt. 165.

⁴ 4 Burr. 2070.

malum in se and those in which it was merely *malum prohibitum*.

Faikney v. Reynous was followed in the subsequent case of *Petrie v. Hannay*¹ by a majority of the Court, Lord Kenyon, C.J., dissenting.

The question came before Lord Kenyon again in 1794, in the case of *Steers v. Lashley*,² and it was there held that where a broker, having paid differences on stock-jobbing transactions for a client, drew a bill on his client for part of the amount due, and, after the client had accepted the bill, indorsed it to the plaintiff in the action, who received it with knowledge of the illegality of the consideration, the plaintiff could not recover. From that time until the repeal of the Act, the principle laid down in *Faikney v. Reynous* and *Petrie v. Hannay*, as well as the distinction drawn between *malum prohibitum* and *malum in se*, met with much disapproval,³ and those cases can no longer be considered as authorities, since the law will not lend its aid to enforce claims that have arisen through a breach of its provisions.⁴ So that where the defence to an action upon a bill of exchange or other similar instrument was that it was founded upon a consideration which was illegal under 7 Geo. II. c. 8, the holder could not recover if it could be shown either that he had given no value for the instrument, or that he had taken it with knowledge of the illegality.⁵ The question has, however, ceased to be of practical importance, for in 1860, after it had for many years been a dead letter, the Act was repealed.⁶ Stock Exchange contracts that partake of

¹ (1789), 3 T.R. 418.

² 6 T.R. 61.

³ *Mitchell v. Cockburne* (1794), 2 H. Bl. 380; *Ex parte Mather* (1797), 3 Ves. 373; *Brown v. Turner* (1798), 7 T.R. 630; *Aubert v. Maze* (1801), 2 Bos. & P. 371; *Ex parte Daniels* (1807), 14 Ves. 190; *Ottley v. Browne* (1810), 1 Ball & Beat, 360; *Cannan v. Bryce* (1819), 3 B. & Ald. 179; *Amory v. Meryweather* (1824), 2 B. & C. 573; *M'Kinnell v. Robinson* (1838), 3 M. & W. 435; 7 L.J. Ex. 149. See too *Booth v. Hodgson* (1795), 6 T.R. 405; *Webb v. Brooke* (1810), 3 Taunt. 6.

⁴ Lindley on Partnership, 6th edit., p. 113.

⁵ *Hay v. Ayling* (1851), 16 Q.B. 423; 20 L.J. Q.B. 171.

⁶ 23 Vict. c. 28.

the nature of gaming transactions have therefore ceased to be illegal,¹ though they are still void and unenforceable under sect. 18 of 8 & 9 Vict. c. 109.

SECTION II.—8 & 9 VICT. c. 109, s. 18.

Section 18 of 8 & 9 Vict. c. 109 declares “that all contracts or agreements, whether by parole or in writing, by way of gaming and wagering, shall be null and void; and that no action shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.”

The section, it will be seen, contains two distinct provisions—making actions unmaintainable where the claim is either

(i.) for money won as the result of a gaming contract; or

(ii.) for money deposited in the hands of any person as stakeholder to abide the event of such a contract.

As to the first of these provisions it is clear that the future price of stocks or shares may be made the subject of a wager, and the possibility of Stock Exchange transactions coming within the scope of the statute does not appear to have been ever seriously disputed. But when the defence of gaming and wagering has been pleaded to an action arising out of a Stock Exchange contract, the attention of the courts has been occupied with two matters. In the first place they have striven to settle the points of distinction between a *bonâ fide* purchase and sale of stock or shares,

¹ Illegality may, however, still be a good ground of defence, as, for instance, where the bargain is made in respect of shares in an illegal company; *Josephs v. Pebrer* (1825), 3 B. & C. 639. But the mere fact that a company, for the shares of which the Stock Exchange Committee has granted a special settlement, although formed in this country, has not been registered here under section 4 of the Companies Act, 1862, does not make the company illegal if its business is carried on in the colonies; *Hunt v. Chamberlain* (1896), 12 T.L.R. 186.

and a transaction which, though in form resembling a purchase and sale, in reality is a contract for payment of differences only, and therefore a bet upon the future price of such stock or shares. In the second place, they have pointed out the difference between the actual contract of purchase and sale, which is avoided by the statute, and contracts subsidiary and incidental to the main agreement, which do not fall within 8 & 9 Vict. c. 109, but are now avoided by the Gaming Act of 1892.

The result of the cases cited below appears to be as follows:—That where the contract is between parties who act as vendor and purchaser, *neither* of whom intends to enter into a real contract, but *both* of whom, at the time of entering into the contract, intend and contemplate a settlement of differences only, the contract is one of gaming and wagering, and is made void by the statute. But

- (i.) that where a possible delivery of stock is within the contemplation of one or both of the parties, although no delivery actually takes place, and although neither of the parties expects to be called upon to take or make delivery, there is a perfectly valid contract to which the courts will give effect. And
- (ii.) that, formerly, even where the main transaction was a gaming transaction, if the action was brought, not upon the contract between the two principals, but upon the collateral agreement between the agent who actually made the bet and the principal who authorized him to make it, the action was maintainable until the Gaming Act of 1892 deprived the agent of any claim to indemnity and commission under such circumstances.¹

In *Grizewood v. Blane*² the first case in which, in relation *Grizewood v. Blane.*

¹ The principle of *Read v. Anderson* (1884), 13 Q.B.D. 779; 53 L.J. Q.B. 532; 51 L.T. 55; 32 W.R. 950, so far as an agent's right to recover from his principal sums due in respect of gaming contracts is concerned, is now overruled by the Gaming Act of 1892. See *post*, p. 192.

² (1851), 11 C.B. 538; 21 L.J. C.P. 46. See too *Barry v. Croskey* (1861), 2 J. & H. 1.

to the statute under discussion, the validity of Stock Exchange contracts was called in question, it was held that a colourable contract for the sale and purchase of railway shares, where neither party intended to deliver and accept the shares, but the intention of both the parties was merely to pay differences according to the rise or fall of the market, was gaming within the meaning of the Act.

*Foulds v.
Thomson.*

In the case of *Foulds v. Thomson*,¹ the Court of Session in Scotland held that, where a person employed a broker to buy and sell stocks which he neither possessed nor intended to take up, merely speculating on the rise and fall of the market and hoping to settle by payment of differences, the contracts were perfectly valid and enforceable and were not gaming and wagering within the meaning of the Act, on the ground that to constitute gaming in the sense of the statute there must be two parties to the contract opposed to each other, each intending that the transactions shall be fictitious, and neither of them bound to accept or deliver the securities, as the case may be.

*Ashton v.
Dakin.*

Two years later, in *Ashton v. Dakin*,² the question was raised whether a broker who was employed to purchase—and actually did purchase—railway shares, and to sell them again before the account-day, could be met with the defence of gaming and wagering in an action brought to recover from his principal his commission and losses incurred in the transactions. The arbitrator before whom the case originally came, had found that at the time when the order to purchase the shares was given, nothing was said by either party as to whether the defendant intended to complete the purchases by taking a transfer of the stock; that the defendant never in fact at any time intended to take a transfer or to call on the plaintiff to deliver the stock; that the plaintiff was fully aware of this when the orders were given; and that the orders were given and accepted upon the implied terms that the plaintiff should not be called upon by the defendant to deliver the shares, but that they should be resold before the

¹ (1857), 19 Court Sess. Cas. (2nd series), p. 803.

² (1859), 7 W.R. 384.

time for payment arrived. But the Court held that as there had been an actual purchase of shares by the broker this was not a gaming contract within 8 & 9 Vict. c. 109. "If," said Pollock, C.B., "no actual purchase had been made, but the object was merely to speculate, without buying or selling, upon the price at a future day, that would be by way of gaming and wagering. But I see no objection to a man, confiding in his own judgment, saying to a broker, 'Will you buy corn (or anything else) for me, and let the bargain be so as to the day of payment, that you may have an opportunity of reselling it for me by such a day, when I expect the market will have risen, and then you will pay the seller for me with the money you receive from the purchaser, and I shall receive the gain, if any, or pay you the loss.'"

Re Morgan,¹ decided in the following year, was a case in which two members of the Stock Exchange, named Phillips and Marnham, claimed to prove in the bankruptcy of a fellow-member for sums of money arising out of Stock Exchange transactions, which they alleged to be due to them. *Re Morgan.*

Phillips had, on the 13th of November, 1858, lent Morgan a sum of £775 on a deposit of one hundred Luxembourg railway shares, which were then at the market price of £7 15s. per share, so that the loan was to the full amount of the shares deposited. The shares were actually deposited, and the money was actually paid. On each settling-day, down to the time when he became a defaulter, Morgan paid Phillips the interest on the loan, and when the shares had fallen in value, he also paid the amount of the depreciation; while, when the shares had risen in value, Phillips paid him the amount of the increase in value. Upon Morgan being declared a defaulter, Phillips took the shares at a price fixed by the officials of the Stock Exchange and claimed to prove for the balance due to him after deducting the price at which the shares were valued.

In Marnham's case, the bankrupt had agreed on the

¹ *Ex parte Phillips, re Morgan. Ex parte Marnham, re Morgan* (1860), 2 De G. F. & J. 634; 30 L.J. Bk. 1; 3 L.T. 516; 9 W.R. 131.

27th of March, 1858, to purchase from Marnham one hundred new shares in the Great Western Railway Company of Canada at £11 10s. per share, the purchase to be completed on the next settling-day. Marnham was actually possessed of shares to that amount. The transaction was not completed on the day named, but was carried over from settling-day to settling-day, Marnham or the bankrupt, as the case might be, paying the difference in the value of the shares on each succeeding settling-day, and the contract being renewed for the following settlement at the market price on the day on which the renewal took place. The shares remained in Marnham's possession, but the bankrupt was credited with all dividends that accrued upon them. On the 2nd of August Marnham repurchased twenty of the shares from the bankrupt at £10 10s. per share, the then market price, and the contract was renewed as to the remaining eighty shares. Upon the bankrupt being declared a defaulter, Marnham took over these eighty shares at a price fixed by the Stock Exchange officials, and claimed to prove in the bankruptcy for the residue of the debt.

The Commissioner in Bankruptcy rejected both proofs, holding that in each case the transactions partook of the nature of gaming and wagering. The Court, however, reversed the Commissioner's decision, and held that the proofs must be admitted, though with some hesitation in Marnham's case. "The mere payment of dividends," said Turner, L.J., "might not perhaps have altered the case, as it is not necessarily inconsistent with the whole transaction having been fictitious and a mere cover for the payment of differences, but I think the repurchase of twenty shares and the payment of the price for them is inconsistent with that view, and stamps the transaction with the character of reality."

*Byers v.
Beattie.*

In *Byers v. Beattie*,¹ however, it was held that an agreement between brokers and their principal that the brokers should at the principal's direction buy and sell shares, being

¹ (1867), 2 Ir. Rep. C.L. 220; 16 W.R. 279.

personally liable to him for profits, and receiving losses from him personally and not merely by way of indemnity, was within the mischief aimed at by the statute, and was not less a gaming and wagering contract because the brokers were to receive a commission in any event. It is clear that in this case brokers, by making themselves personally liable to the client for the profits of the transactions, were acting in the matter as principals and not as agents, and therefore, there being no intention to do anything more than to receive or pay differences, the transaction resolved itself into a bet between the parties to the action on the future price of the shares.

In 1875, in *Marten v. Gibbon*,¹ where the defendant had *Marten v. Gibbon.* instructed his brokers to sell the prospective dividends on certain railway stock, and the brokers accordingly, calculating the dividends at a certain rate per cent., sold them to jobbers on the Stock Exchange, and, when the dividend declared amounted to a higher rate than that which they had calculated, paid the jobbers the differences, it was decided that the transaction did not amount to gaming within the meaning of the Act, and that the brokers were entitled to recover from their principal the amount which they had paid, notwithstanding the refusal of the Committee of the Stock Exchange to recognize or enforce such bargains.

In 1887 the question came before the Court of Appeal in the case of *Cooper v. Neil*.² The judgment of the Court was *Cooper v. Neil.* delivered by Brett, L.J., Cotton and Thesiger, L.JJ., concurring. "The real question," his Lordship said, "was, what was the contract between the broker Bailey and the defendant? Three contracts had been suggested, one of which had been found to be the true one by the jury, but upon unsatisfactory evidence. One suggested was that Bailey and the defendant came to an express agreement that Bailey should enter into transactions on the Stock Exchange

¹ 33 L.T. 561; 24 W.R. 87. There can be no question, however, that contracts for the purchase and sale of future dividends may amount to wagering; see *ex parte Marnham, re Morgan*, p. 175, *supra*.

² 27 W.R., at p. 159.

which might end either in gain or loss, but that whatever happened to Bailey upon the Stock Exchange, he would only claim differences from or pay differences to the defendant. In that case he was inclined to think the broker could not sue for the differences as it would be a gambling transaction. There was, however, no evidence of such a contract. The contract found by the jury was that Bailey was employed by the defendant to make with the jobbers on the Stock Exchange time-bargains, and that he did so. If such was the case the defendant was entitled to succeed, because there was no payment in that case by the brokers, and the plaintiff was only suing in respect of an alleged liability incurred by him; but if he was employed to make with the jobbers time-bargains, he came under no liability if he did not make them. They would be within the statute and void, and the jobbers could not sue upon them. The jury had, however, misunderstood the questions put to, and the answers given by, the witnesses. The third contract suggested was that the defendant employed Bailey to make contracts upon the Stock Exchange with the jobbers according to the rules of the Stock Exchange, and therefore real so far as the jobbers were concerned; but that Bailey undertook with the defendant that he would so manage, or endeavour to manage, the contracts with the jobbers, that the defendant would never be called upon to pay or receive more than differences if Bailey succeeded; but still the defendant authorized Bailey to make contracts upon which he would be personally liable. The defendant must know that any jobber could make Bailey liable to take shares. If such was the employment the reasonable implication was that there was an implied contract that if Bailey incurred liabilities without his own fault, the defendant would indemnify him. Part of the contract might be a gambling transaction, but in the contract was included an authority to Bailey to make himself liable to the jobbers. Upon that authority rose an implied contract to indemnify him, which was not within the statute at all, but a collateral contract on which Bailey might sue without regard to the bet."

In the same year the question was exhaustively treated both in the Queen's Bench Division and in the Court of Appeal in the case of *Thacker v. Hardy*.¹ There the learned judge in the court of first instance found that the plaintiff, who was a broker and a member of the Stock Exchange, was employed by the defendant to speculate for him upon the Stock Exchange; that to the knowledge of the plaintiff the defendant did not intend to accept the stock bought for him, or to deliver the stock sold for him, but expected that the plaintiff would so arrange matters that nothing but differences should be payable or receivable by him, but that he knew the course of dealing on the Stock Exchange and was content to run the risk of having to accept or give delivery of the shares contracted for; and that the plaintiff knew that unless he could so arrange matters for the defendant as the latter expected he would be unable to meet the engagements into which the plaintiff might enter for him. On these facts the courts held that the plaintiff was entitled to recover, for the employment of the plaintiff by the defendant was not against public policy, was not illegal at common law, and was not in the nature of a gaming and wagering contract within the meaning of 8 & 9 Vict. c. 109.

"I proceed next," said Lindley, J.,² "to examine the law applicable to transactions of this kind. The only statute in force and material to be noticed is 8 & 9 Vict. c. 109, s. 18, which, in effect, declares all contracts by way of gaming and wagering null and void, and renders actions for the recovery of money won on any wager unsustainable. The Act does not expressly mention or allude to Stock Exchange transactions; but it has been decided that agreements between buyers and sellers of shares and stocks, to pay or receive the differences between their prices on one day and their prices on another day, are gaming and wagering transactions within the meaning of the statute. *Grizewood v. Blane*, *Barry v. Croskey*, and *Cooper v. Neil*,³ all decide

¹ (1878), 4 Q.B.D. 685; 48 L.J. Q.B. 289; 39 L.T. 595; 27 W.R. 158.

² 4 Q.B.D., p. 686.

³ See these cases cited above.

that. But the plaintiff did not agree to buy or sell from or to the defendant; and I have the authority of Brett, L.J.,¹ for saying that the statute only affects the contract which makes the bet or wager. The agreement between the plaintiff and the defendant rendered it necessary that the plaintiff should himself, as principal, enter into real contracts of purchase or sale with the jobbers, and the plaintiff accordingly did so, and in respect of these contracts he incurred obligations, for the non-performance of which actions could, and can now, be brought against him. It is against the liability so incurred that he seeks to be indemnified.

“Upon general principles an agent is entitled to indemnity from his principal against liabilities incurred by the agent in executing the orders of his principal, unless those orders are illegal, or unless the liabilities are incurred in respect of some illegal conduct of the agent himself, or by reason of his default.” After discussing the question of the illegality of the transactions, his lordship continued: “In answer to the argument that a contract which is void and unenforceable cannot be made the foundation of an implied promise to indemnify, it appears to me sufficient to say that an obligation to indemnify is created whenever one person employs another to do a lawful act which exposes him to liability by buying and selling as above described. I am unable to draw the inference which the jury drew in *Cooper v. Neil*, namely, that the plaintiff was instructed to make time-bargains and that he did in fact make such bargains. A real time-bargain is, I suspect, a very rare occurrence. *Grizewood v. Blane* affords an instance of one, and *Cooper v. Neil*, as understood by the jury, afforded another. But what are called time-bargains are in fact the result of two distinct and perfectly legal bargains, namely, first, a bargain to buy or sell; and, secondly, a subsequent bargain that the first shall not be carried out; and it is only when the first bargain is entered into upon the understanding that it is not to be carried out, that a time-bargain in the sense of an

¹ In *Cooper v. Neil*, *supra*.

unenforceable bargain is entered into. Such bargains are very rare, and this is what I understand the witnesses to mean when they say that there are no such things as time bargains on the Stock Exchange."

This judgment was affirmed in the Court of Appeal by Bramwell, Brett, and Cotton, L.JJ. "The question," said Bramwell, L.J.,¹ "is between the jobber in the House and the broker. The bargains made by the plaintiff on behalf of the defendant were what they purported to be: they gave the jobber a right to call upon the broker or the principal to take the stock, and they gave the broker the right to call upon the jobber to deliver it. There was nothing in the transaction from which the jobber could tell whether the transaction was *bonâ fide*, that is, for the purposes of investment, or whether it was a mere speculation." After pointing out that it had been contended that, although the jobber might be able to enforce the contract against the broker, the contract between the latter and the defendant was that the broker was so to arrange matters that the defendant should never be called upon to receive or give delivery of the stock, the Lord Justice continued:—"If a principal orders a broker to sell for him £10,000 consols for the next account, I think it clear that he could not afterwards, as a matter of right, order him to rebuy them: the broker might object that he was not bound to do so. Whether an obligation is cast upon the broker to avoid the transaction when business has been previously done in that manner, may be doubtful. If the principal had said that in reality he could not take the stock, and that the broker must resell it, and if the broker had assented, or even if the broker had expressed dissent, but nevertheless had bought the stock, possibly the understanding might be held to be, and a court might come to the conclusion, that the arrangement was in truth that the two transactions should be set off the one against the other, and that the principal should only pay differences. However, it must not be overlooked that the broker might

¹ 4 Q.B.D., pp. 690-692.

lawfully object that he was not bound to resell, although he would try to do so if he could find a market for the stock. . . . In my opinion that bargain does not infringe the provisions of 8 & 9 Vict. c. 109, which was directed against gaming and wagering; for the principal might take the stock which had been bought for him and hold it as an investment. I have no doubt that it continually happens that stock which is bought for a rise is really taken up and held when the market falls. But the broker might be unable to resell, if, for instance, he had been ordered to buy shares in an insolvent bank; so that the transaction really comes to this, that the principal is bound either to take or deliver the stock (as the case may be), but that the broker is to endeavour to relieve the principal from liability by buying or selling again. There is no gaming and wagering in a transaction of that kind: the broker has no interest in the stock, and it does not matter to him whether the market rises or falls; but when a transaction comes within the statute against gaming and wagering the result of it does affect both parties. In the case before us the broker does not wager at all. I am of opinion that if every fact were found in the defendant's favour, he could not succeed."

"The essence of gaming and wagering," said Cotton, L.J., in the same case,¹ "is that one party is to win and the other to lose upon a future event, which at the time of the contract is of an uncertain nature; that is to say, if the event turns out one way A. will lose, but if it turns out the other way he will win. But that is not the state of facts here. The plaintiff was to derive no gain from the transaction; his gain consisted in the commission which he was to receive, whatever might be the result of the transaction to the defendant." And the Lord Justice distinguished the case under consideration from *Grizewood v. Blane* in the following words: "In *Grizewood v. Blane* the plaintiff, being a jobber,

¹ 4 Q.B.D., p. 695. See also to the same effect *Carlill v. Carbolic Smoke Ball Co.* [1892], 2 Q.B. 484; 61 L.J. Q.B. 696; affirmed [1893], 1 Q.B. 256; 62 L.J. Q.B. 257; 67 L.T. 837; 41 W.R. 210.

pretended to buy *from*, or sell *to*, the defendant; here the plaintiff bought and sold *for* the defendant.”¹

The effect of this restrictive interpretation was to make the statute almost inoperative, in the case, at all events, of transactions on the Stock Exchange, and the decisions cited above were somewhat severely criticized by Manisty, J., in the case of *Cohen v. Kittell*.² In that case the plaintiff had employed the defendant to bet on commission, and the defendant having failed to make certain bets in accordance with the instructions given to him by the plaintiff, the latter sued him for breach of contract, claiming as damages the amount which he would have won had the bets been made. Manisty, J., in giving judgment said: “A decision in favour of the plaintiff in this case would still further defeat the object of this statute which, as the preamble shows, was to add to the strictness of the law with regard to gambling. Since the Act passed, however, and in consequence, as I cannot but think, of some of the decisions upon it, the practice which it was intended to discountenance has greatly increased, and that with results of a most disastrous character, as regards both horse-racing and transactions in stocks. The contracts avoided by the 18th section are not, it is to be observed, ‘contracts of gaming and wagering,’ but ‘contracts *by way of* gaming and wagering.’ These words, which are perhaps capable of a different interpretation, have been held not to apply to contracts between principals and agents, by which the agents agree to bet with third persons on behalf of their principals. Doubtless where the gambling transaction is a thing of the past, the bet having been won or lost, and the money having been received or paid, as the case may be, by the agent, it would be unjust that he should not in the one case account to, and in the other be recouped by, his principal. But in *Read v. Anderson*³ it was held by

¹ 4 Q.B.D., at p. 697.

² (1889), 22 Q.B.D. 680; 58 L.J. Q.B. 241; 60 L.T. 932; 37 W.R. 400.

³ See p. 192, *post*.

a majority of the Court of Appeal that as soon as a bet has been made by an agent in his own name on account of a principal, the principal cannot revoke the authority to pay the bet should it be lost, because forsooth the result to the agent may be the inconvenience of exclusion from Tattersall's. The decision is, of course, binding on this Court, but I personally agree with the dissenting judgment of the Master of the Rolls."

It may, however, be remarked that to have decided this case otherwise than as it was decided, would have been to have taken a considerable step in advance of any previous decisions on the point. In *Read v. Anderson* the bet had already been made and lost, and therefore the Court was not forcing the defendant to *make* contracts, which the law avoided, as would have been the case in *Cohen v. Kittell* had the judgment been in the plaintiff's favour. Moreover, in considering the bearing of *Cohen v. Kittell* on the Stock Exchange transactions, it is to be remembered that in all the Stock Exchange cases in which the contract was enforced, the Court held that the transactions were not as a matter of fact gaming and wagering, but were real contracts of purchase and sale, while the circumstances of *Cohen v. Kittell* of course precluded the possibility of any such contract in that case.

*Shaw v.
Caledonian
Railway
Co.*

Down to this time all actions brought in connection with Stock Exchange transactions appear to have been brought by or against members of the Stock Exchange; but in 1890 a case was tried in the Court of Session in Scotland in which the transactions out of which the claim arose were conducted with an "outside" dealer in stocks. In *Shaw v. Caledonian Railway Co.*,¹ Rayner, the second defender, and the only witness examined, stated that it was never intended, and was no part of his bargain with Shaw, that stock should be delivered, and that he had no contract except for the payment of differences; that he had deposited the stock certificates, the subject of the action, as a temporary pledge in security for any differences which might arise; that,

¹ (1890), 17 Court Sess. Cas. (4th series), 466.

when asked to do so by Shaw, he signed a blank transfer which did not contain any particulars of the stock. He further stated that he looked upon the series of transactions in which he engaged from the autumn of 1886 down to the end of June, 1887, as gambling transactions. Nevertheless, the Court, overruling the findings of the sheriff-substitute, held that the transactions in question were not gaming transactions. "I think," said Lord Shand,¹ "that the rule or principle to be applied is of this nature: that if it appears clearly that the contracts and dealings between the parties were for differences only, and were not intended in any sense to be real transactions, and were not real transactions, then they must be regarded as gambling transactions, and the Court will not give effect to them. And I say further, that if it appears that any writings which passed between the parties, in the form of sale or otherwise, were a mere form intended by both parties to give a colour to the transactions, and to have no legal effect of any kind, then I do not think that writings in such circumstances would take the case out of the rule I have mentioned. Transactions carried through by writings of that kind would be colourable merely, the transactions in themselves being truly for differences, and for nothing else. But, on the other hand, I think it appears from the authorities, and on sound principle, that if contracts for the sale of stock or shares, or of goods, as the case may be, are entered into so as to create mutual obligations upon the parties, on the one hand to give, and on the other to take, delivery of shares or stock, or of goods, as the case may be; if the obligation is such as can be enforced if either party think fit to do so, then I think we get out of the region of arrangements for mere differences of the nature of betting and gambling. If either one or both the parties may, as and when he thinks fit, demand or give delivery of stock, and ask payment of the price under the contract—if that be so as to one of the parties—then I think the transaction has the mark and stamp of a real transaction, and

¹ 17 Court Sess. Cas. (4th series), p. 475.

is inconsistent with the notion of a transaction for mere differences."

Lowenfeld
v. *Howat*.

In *Lowenfeld v. Howat*,¹ which came before the Court of Session in the following year, the Court took the same view of similar transactions and overruled the defender's plea of gaming and wagering, holding that the mere fact that a broker is known not to be possessed of capital proportionate to the amount of the apparent transactions conducted by him on behalf of his principal is not sufficient, either alone or in conjunction with other circumstances, to stamp the contracts in dispute as gaming transactions. "There are," said Lord Adam, "bought and sold notes in every case, and so far as appears from the documents everything bought and sold was a real transaction. Now, I do not think any one can dispute that it is competent to get behind the notes, and to show that the contract apparently expressed upon the document was not a real contract between the parties; that although that contract so far as appears could be enforced, nevertheless it was, by some other contract or some other agreement provable by writing or parole, not a real transaction, and that that was the state of the fact. I do not in the least doubt that such a contract could be proved. I can quite understand that the contract might have included that, but I agree with your Lordships that there is no evidence of that here. I do not find in the state of the evidence that there was any such agreement or any necessity for such. I have no doubt at all that Mr. Lowenfeld, the dealer in these stocks, knew his position quite well, and knew that any contract or agreement he made with Mr. Howat for dealing in differences would render all his transactions with him illegal. In the circumstances, he would conclude that there was no necessity whatever for him to enter into such an understanding with the purchaser. I have no doubt, on the other hand, Mr. Howat understood in his own mind perfectly well that Mr. Lowenfeld would deal with him practically only for differences, and that the

¹ (1891), 19 Court Sess. Cas. (4th series), 128.

parties expected that that would be the course of dealing. But that to my mind is not enough. That is a great deal short of what I think is necessary. I think that the party who admits that the contract disclosed by the documents does not show any such transaction, is bound to show some other contract or some other thing which could be enforced by the one against the other, which would prevent either of them founding upon the contract produced." And Lord M'Laren added: "I think one of the difficulties is this, that the dealer generally has no interest as to the particular mode in which the settlement is to be effected. It is a matter of perfect indifference to him whether the account is to be closed by a resale or by a delivery of the stock, because if his customer likes to take delivery of the stock the broker has only to go into the market and to supply himself at the market price of the day. It is, therefore, antecedently very unlikely that a dealer should enter into a subsidiary engagement that would be of no benefit to himself in the eventual settlement, and which would expose the original transaction to be set aside on the ground of illegality if it turned out to be favourable to himself. The unsupported evidence of either party would not in ordinary circumstances be sufficient to displace the inference arising from the documents, especially when the evidence of the dealer is to the effect that the transaction was a real transaction and in accordance with the documents. I must say that as regards such Stock Exchange transactions as are carried out in the ordinary course of business, the distinction between contracts for differences and real transactions is of purely theoretical interest, and really does not afford to speculators in stock any available means of being released from their obligations."

In the *Universal Stock Exchange v. Stevens*,¹ another case *Universal Stock Exchange v. Stevens.* in which the transactions in question were conducted with an outside broker, Romer, J., held that although the parties might have contemplated that as a whole there would be a

¹ (1892), 66 L.T. 612; 40 W.R. 494.

mere payment of differences between them, yet inasmuch as the contracts entered into involved the liability of the actual delivery of the stock dealt with, they were not gaming and wagering transactions. "No doubt," said the learned judge, "the parties contemplated that actual delivery of the stock would not take place except under special circumstances, but the contracts were, in fact, sales and purchases of stock, and were not wagering and gaming, and not the less so because both parties may have thought that, as a whole, the contracts would result in the long run in the mere payment of differences."

*Shaw v.
Bayley.*

In 1893 the question again came before the Court of Appeal with a similar result.¹

*Forget v.
Ostigny.*

In 1895 the question was raised before the Judicial Committee of the Privy Council, in an appeal from a decision of the Court of Queen's Bench for Lower Canada.² The action was brought by a broker, a member of the Montreal Stock Exchange, against his principal to recover a sum of \$1926, the balance alleged to be due from the latter in respect of certain contracts entered into by the broker on his behalf and by his directions for the purchase and sale of shares in various joint-stock companies. It was not disputed that the broker had actually taken delivery of the shares in question, but the defence chiefly relied upon was that, as between the broker and his principal, the transactions out of which the claim arose were gaming contracts within the meaning of Article 1927 of the Civil Code of Lower Canada, the words of which are to the same effect as those of section 18 of 8 & 9 Vict. c. 109. The Superior Court of Montreal, before whom the case originally came, had found (1) that Ostigny, who was a bank clerk, with a salary of \$900 to \$1000 a year, never intended to take delivery of the shares, but merely to speculate on the rise and to settle according to the variation of prices; (2) that the broker, Forget, could not have been ignorant of

¹ *Shaw v. Bayley*, *Times*, January 24, 1893.

² *Forget v. Ostigny* [1895], A.C. 318; 64 L.J. P.C. 62; 72 L.T. 399; 43 W.R. 590.

Ostigny's circumstances, and that he encouraged the latter's speculations by not fixing any date for the delivery of the shares; (3) that each transaction between the appellant and the respondent was nothing but a bet upon the rise of the shares in question, the appellant undertaking to pay to the respondent the difference in price if they rose, and the respondent undertaking to pay to the appellant the difference in price if they fell; (4) that, under these circumstances, the purchase of shares by the appellant had no other object than to shield himself against the rise expected by the respondent. On these findings judgment was given for the respondent, and on appeal, the Court of Queen's Bench, with one dissentient, affirmed this decision.

On appeal to the Privy Council, however, the Judicial Committee reversed the decision. Lord Herschell, L.C., in delivering the judgment of the Court, after pointing out that the broker in every case had taken delivery of the shares, and that dividends accruing on them between the times of purchase and re-sale were credited to the respondent, said:¹ "In the courts below much stress was laid on the fact that the respondent was known to the appellant to be a bank clerk with a small salary and possessed of little other means. This was regarded as bringing home to him the knowledge that the respondent had in view not investment but gambling. The other circumstances mainly relied on were that the respondent never asked for nor received delivery of any of the shares purchased; that the purchase-money was raised by a loan procured by the appellant; that the respondent was not in a position to furnish the whole of the purchase-money, and, in fact, only provided the appellant with a small margin.

"It may well be that the appellant was aware that in directing a purchase to be made the respondent did not intend to keep the shares purchased, but to sell them when, as he anticipated would be the case, they rose in value;

¹ [1895], A.C., p. 122.

that his object was not investment, but speculation. To enter into such transactions with such an object is sometimes spoken of as 'gambling on the Stock Exchange;' but it certainly does not follow that the transactions involve any gaming contract. A contract cannot properly be so described merely because it is entered into in furtherance of a speculation. It is a legitimate commercial transaction to buy a commodity in the expectation that it will rise in value, and with the intention of realizing a profit by its re-sale. Such dealings are of everyday occurrence in commerce. The legal aspect of the case is the same, whatever be the nature of the commodity, whether it be a cargo of wheat or the shares of a joint-stock company. Nor, again, do such purchases and sales become gaming contracts because the person purchasing is not possessed of the money required to pay for his purchases, but obtains the requisite funds in a large measure by means of advances on the security of the stocks or goods he has purchased. This, also, is an everyday commercial transaction. For example, a merchant who has to pay the price of a cargo purchased before he resells it, obtains in ordinary course the means of doing so by pledging the bill of lading.

"Much stress was laid on the fact that the respondent never asked for delivery of any of the shares purchased, and that the appellant never tendered such delivery. The question whether a contract is intended to be executed by delivery according to the obligations expressed upon the face of it, is no doubt an important test for determining whether it is a real one or only a gambling arrangement under the guise of a commercial contract."

After reading from an Act of the Dominion Parliament passed in 1888, by which it was made a misdemeanour to make a contract for the purchase or sale of stock or shares without either an actual delivery or a *bonâ fide* intention to make or receive delivery, but subject to the proviso that the Act was not to apply where the purchaser's broker received delivery on behalf of his principal, but retained or pledged the stock or shares as security for the advance

of the purchase-money, his Lordship continued: "Their Lordships think this proviso was enacted by way of precaution only, inasmuch as they cannot doubt that, where a real contract of purchase has been made and carried out by a broker on behalf of a principal, delivery to the broker is delivery to the principal just as much as if it had been actually made to himself.

"In the present case, the respondent might at any time on tendering the balance due in respect of any of the shares purchased have required the appellant to deliver them to him. As has been pointed out, he received the dividends upon them, and any increase in their value enured exclusively for his benefit, whilst if there was a diminution of value the loss was exclusively his."

In *Strachan v. Universal Stock Exchange*,¹ however, the Court of Appeal held that there was ample evidence on which a jury might come to the conclusion that certain dealings between a firm of outside brokers and a principal were mere gambling transactions, although the contract notes and other documents were in correct form. "I come," said Rigby, L.J., "to the same conclusion—that there was evidence upon which a jury might well find that the written transactions, which are, of course, in form—it is an elementary part of such a transaction that they should be in form—were a cloak for the real transactions, and that the real transactions were transactions in differences—gaming and wagering transactions of a simple character."

To sum up the results of the above cases, it appears that although, if proved, it will be a complete defence to an action in respect of Stock Exchange transactions to allege that such transactions were not *bonâ fide* purchases and sales, but were merely by way of gaming and wagering, yet such an allegation is exceedingly difficult to substantiate, and, in the words of Lord McLaren in *Lowenfeld v. Howat*,² the defence of gaming and wagering "really

¹ [1895], 2 Q.B. 329; 64 L.J. Q.B. 723; 73 L.T. 6; 43 W.R. 611.

² (1891), 19 Court Sess. Cas. (4th series), p. 137.

does not offer to speculators in stock any available means of being released from their obligations."

*Read v.
Anderson.*

The scope of the statute was still further contracted by the decision of the Court of Appeal in the case of *Read v. Anderson*.¹ It was there held by Bowen and Fry, L.JJ., affirming the decision of Hawkins, J.—Brett, M.R., however, dissenting—that even where the transactions in question undoubtedly came within the provisions of section 18, still, if they were conducted through an agent, who, in the event of there being a loss upon them which was not paid, would suffer severe pecuniary inconvenience, or become liable to the deprivation of privileges which would practically exclude him from the exercise of his calling, there was an implied authority from the principal to the agent to pay the debt, which authority was irrevocable when once the liability had been incurred. But the principle of that case was overruled by the Gaming Act of 1892, which enacted that "any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Act of the eighth and ninth Victoria, chapter one hundred and nine, or to pay any sum of money by way of commission, reward, or otherwise in respect of such contract, or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

Effect of
Gaming
Act of 1892.

It is evident that the effect of this Act is, not only to prevent a broker who has entered into contracts which are proved to fall within 8 & 9 Vict. c. 109, from recovering differences arising out of such contracts, which he has paid on account of his employer, but also to prevent him from recovering any commission or payment for his services in such transactions; and, therefore, while no action is

¹ (1884), 13 Q.B.D. 779; 53 L.J. Q.B. 352; 51 L.T. 55; 32 W.R. 950. See too the opinion of Erle, C.J., to the same effect in *Rosewarne v. Billing* (1863), 15 C.B. N.S. 316. 322; 33 L.J. C.P. 55.

maintainable upon the original transactions by reason of 8 & 9 Vict. c. 109, the collateral contract between broker and principal for payment of commission and indemnity is now also unenforceable owing to the later Act. That Act, however, is not retrospective, and therefore a broker employed to enter into gaming contracts prior to its passing may still recover any moneys which were already due to him at the time when it came into operation.¹

As has been already shown, a principal cannot recover damages from his agent for an omission to make bets which he has been employed to make.² But when once the bet has been made and won, and the money has been paid over to the agent, the principal may maintain an action for its recovery from the agent, for the undertaking of the agent to pay over to his principal the money when received is affected neither by 8 & 9 Vict. c. 109,³ nor by the Gaming Act of 1892.⁴

The provision which section 18 contains—that no action shall be brought to recover any sum of money or valuable thing “which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made”—affects those cases only in which the winner of a bet is seeking to recover the money or valuable thing either from the loser, or from a stakeholder in whose hands it has been deposited by the loser to await the result of the bet. In the latter case a long series of decisions shows that, whether the bet has been decided or not, until the deposit has actually been paid over in satisfaction of the bet, either party is at liberty to revoke the authority to pay which he

Act not retrospective.

Winnings paid to agent recoverable by principal.

Recovery of money deposited with a stakeholder.

¹ *Knight v. Lee* [1893], 1 Q.B. 41; 62 L.J. Q.B. 28; 67 L.T. 688; 41 W.R. 125.

² *Cohen v. Kittell* (1889), 22 Q.B.D. 680; 58 L.J. Q.B. 241; 60 L.T. 932; 37 W.R. 400.

³ *Johnson v. Lansley* (1852), 12 C.B. 468; *Beeston v. Beeston* (1875), 1 Ex. D. 13; 45 L.J. Ex. 230; 33 L.T. 700; 24 W.R. 96; *Bridger v. Savage* (1885), 15 Q.B.D. 363; 54 L.J. Q.B. 464; 53 L.T. 129; 33 W.R. 891.

⁴ *De Mattos v. Benjamin* (1894), 63 L.J. Q.B. 248; 70 L.T. 560; 42 W.R. 284

has given to the stakeholder, and recover the deposit.¹ Of this right the depositor is not deprived by the Gaming Act of 1892, which does not affect money deposited with a third party for the purpose of paying the winner of a bet.²

Where a deposit has been placed in the hands of one of the parties to the wager, so long as the wager is undecided the depositor may recover his deposit;³ but as soon as the wager has come off, whether the event is in the depositor's favour or not, he cannot maintain any action for the money deposited.⁴

Recovery
of money
and
securities
deposited
as cover.

The principle of the above cases does not, however, affect securities or money deposited with one party by the other to insure the observance by the depositor of the terms of the contract, for in such a case the securities or money do not constitute a stake within the meaning of the provision. The securities may be recovered at any time before they have actually been realized and the proceeds appropriated to the discharge of differences already incurred.⁵ "In my opinion," said Lord Esher, M.R., in *Strachan v. Universal Stock Exchange*,⁶ "the valuable things which in this case were given as security against a breach of contract and a non-payment of damages were not deposited to abide the event of a wager within the meaning of the 18th section. That section applies where there is a deposit upon these terms: that on the determination of the event of the wager,

¹ *Varney v. Hickman* (1847), 5 C.B. 271; 17 L.J. C.P. 102; *Martin v. Hewson* (1855), 10 Ex. 737; 24 L.J. Ex. 174; *Hampden v. Walsh* (1876), 1 Q.B.D. 189; 45 L.J. Q.B. 238; 33 L.T. 852; 24 W.R. 607; *Diggle v. Higgs* (1877), 2 Ex. D. 422; 46 L.J. Ex. 721; 37 L.T. 27; 25 W.R. 777; and see the remarks of Cockburn, C.J., in the last case, on the previous cases, and Lord Esher's comment, on the same cases, in *Strachan v. Universal Stock Exchange* [1895], 2 Q.B., at p. 699.

² *O'Sullivan v. Thomas* [1895], 1 Q.B. 698; 64 L.J. Q.B. 398; 72 L.T. 285; 43 W.R. 269.

³ *Manning v. Purcell* (1855), 7 De G. M. & G. 55; 24 L.J. Ch. 522.

⁴ *Ibid.*; and see *Strachan v. Universal Stock Exchange* [1895], 2 Q.B. 697; 65 L.J. Q.B. 178; 73 L.T. 492; 44 W.R. 90.

⁵ *Strachan v. Universal Stock Exchange* [1895], 2 Q.B. 329; 64 L.J. Q.B. 723; 73 L.T. 6; 43 W.R. 611.

⁶ [1895], 2 Q.B. 332.

that which is deposited is, by that alone, to become the property of the winner. That is not the case here, where there is a deposit by way of security, for the property does not pass the moment the bet is lost and won. There is something else which must happen, which is, that there being a breach of contract, the damages arising from it are not paid. I think a valuable thing deposited by way of security is not deposited to abide the event on which any wager shall have been made, within the meaning of the 18th section." But when the securities have been realized, and the proceeds appropriated to the discharge of differences already incurred, then it appears that the depositor cannot recover either the securities or damages.¹ And where money has been deposited by a plaintiff with defendants as cover, and, to his knowledge, treated by the defendants as appropriated to meet his losses to them, the plaintiff is likewise prevented from recovering.²

A wager is not forbidden by the statute. It is left a mere debt of honour, being deprived of all legal obligation, but not made illegal.³ And therefore, prior to the Gaming Act of 1892, although no action could be maintained upon the wager itself, yet where the wager had been lost, and the plaintiff had at the defendant's request paid the money due upon it, he could successfully have maintained an action for its recovery ;⁴ and it was even held that, from an authority to bet, a request to pay the bet, if lost, might be inferred.⁵ But since the Act of 1892, any one who, at the defendant's request, has paid money in settlement of lost bets is unable to recover it, although he was himself no party to the

Payment
of lost bet
by a third
party.

¹ *Strachan v. Universal Stock Exchange* [1895], 2 Q.B., pp. 334, 699.

² [1895], 2 Q.B., p. 699.

³ *Haigh v. Town Council of Sheffield* (1874), L.R. 10 Q.B., p. 109.

⁴ *Jessop v. Lutwyche* (1854), 10 Ex. 614; 24 L.J. Ex. 65; *Knight v. Cambers* (1855), 15 C.B. 562; 24 L.J. C.P. 121; *Rosewarne v. Billing* (1863), 15 C.B. N.S. 316; 33 L.J. C.P. 55; *Ex parte Rogers* (1880), 15 Ch. D. 207; 43 L.T. 163; 29 W.R. 29.

⁵ *Bubb v. Yelverton* (1871), 24 L.T. 822; 19 W.R. 739; *Oldham v. Ramsden* (1875), 44 L.J. C.P. 309; 32 L.T. 825.

betting, and, apparently, whether he knew or did not know the purpose for which the payments were made.¹

Moreover, the payment of bets, when lost by an agent authorized to make them, but without a special subsequent authority to pay them, has been held to be a sufficient consideration for the giving of a bill of exchange.² But a bill so given now would be held to be given for no consideration, and, as between the original parties, would be unenforceable. In cases in which the claim was for work done and money paid, a plea of gaming and wagering was held to be a bad plea, as it afforded no answer to the count for work done.³ But these cases must now be considered as overruled by the statute of 1892.

Recovery
of money
lent to pay
bets.

It has further been held to be no defence to an action for money lent, to say that it was lent to pay a bet, if the bet was already lost at the time when the loan was made;⁴ and a *bonâ fide* loan by the winner of a bet to the loser for general purposes, out of which the loser paid the bet to the winner, has been held to be recoverable, though the case would have been different if there had been an agreement beforehand that the bet should be so paid, as then the loan would have been a mere evasion of the statute.⁵ Although there is no authority upon the point, on principle there does not seem to be any reason why money lent with a knowledge that it is borrowed for the purpose of making bets should not be recovered, provided that it is not lent by a person interested in the payment of the bets. These cases do not appear to come within the operation of the Gaming Act of 1892.

As the statute 8 & 9 Vict. c. 109 makes contracts by way

¹ *Tatam v. Reeve* [1893], 1 Q.B. 44; 62 L.J. Q.B. 30; 67 L.T. 683; 41 W.R. 174.

² *Oulds v. Harrison* (1854), 10 Ex. 572; 24 L.J. Ex. 66.

³ *Knight v. Fitch* (1855), 15 C.B. 566; 24 L.J. C.P. 122; *Inchbald v. Cockerill* (1858), 4 Jur. N.S. 693.

⁴ *Ex parte Pyke, In re Lister* (1878), 8 Ch. D. 754; 47 L.J. Bk. 100; 38 L.T. 923; 26 W.R. 806.

⁵ *Fox v. Hill* (1859), 4 H. & N. 359; 7 W.R. 263.

of gaming and wagering not illegal, but merely null and void, negotiable instruments given for the payment of money won upon such contracts are not given for an illegal consideration, but for no consideration at all.¹ And therefore, when such securities come into the hands of any one who has given consideration for them, whether that person knew or did not know of the wager upon which they were founded, an action is maintainable against the loser of the wager.² And where non-negotiable securities are deposited as cover for such a debt, there seems to be no reason, either on authority or on principle, why the person who has received them for value should not be entitled to claim the amount due from the loser of the bet.³

SECTION III.—LEEMAN'S ACT.

The next limitation which the Legislature thought fit to impose upon the freedom of Stock Exchange transactions was in 1867, when the statute known as Leeman's Act⁴ was passed, with the intention of preventing speculation in bank shares. But this attempt also, to a large extent, failed to attain to the object which its promoters had in view. The Act, which is still in force, declared that all contracts for the sale or transfer of stock or shares in any joint-stock banking company should be null and void, unless the contract stated the numbers by which such stock or shares were distinguished in the register or books of the company, or, where no register by distinguishing numbers was kept, the persons in whose names the stock or shares were standing in the books of the company, as the registered proprietors thereof,

¹ *Fitch v. Jones* (1855), 5 E. & B. 238; 24 L.J. Q.B. 293; *Lilley v. Rankin* (1887), 56 L.J. Q.B. 248; 55 L.T. 814; *Blake v. Parker*, the *Times*, April 21, 1896.

² *Oulds v. Harrison* (1854), 10 Ex. 572; 24 L.J. Ex. 66.

³ *Strachan v. Universal Stock Exchange* [1895], 2 Q.B. 329; 64 L.J. Q.B. 723; 43 W.R. 611; *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140.

⁴ 30 Vict. c. 29.

at the time of making the contract.¹ The statute further made it a misdemeanour for any one, whether principal, broker, or agent, to wilfully insert in the contract a false entry of any numbers or the names of any persons other than the registered proprietors.

A custom, however, grew up on the Stock Exchange to disregard the provisions of the Act, and to send out the contract notes without specifying the numbers of the shares or the names of the registered proprietors. But the custom has been held to be unreasonable, and a contract which embodies it cannot be enforced against one who was unaware of the custom at the time when the contract was made.² And when an authority to buy bank shares has been given by a principal to his broker, it will in the first instance be presumed that the authority was to make a valid and binding contract in accordance with the provisions of Leeman's Act, and not one that is void and unenforceable.³

But in *Seymour v. Bridge*,⁴ where the defendant had on several previous occasions dealt in bank shares and received contract notes which did not comply with the requirements of the Act, it was held that he had authorized his broker to enter into that particular form of contract and must indemnify him against any resulting loss. *Seymour v. Bridge* was decided on the authority of *Read v. Anderson*, and the principle of the latter case has since been overruled, so far as transactions that come within 8 & 9 Vict. c. 109 are con-

¹ In *Mitchell v. City of Glasgow Bank* (1879), 4 App. Cas. 624; 27 W.R. 875, where the sale had been entered in the transaction books of the respective brokers, and each entry specified the name of the broker for the other party and was initialed by him, and at the time of sale the vendor's name was verbally mentioned to the purchaser's brokers, it was held by the Court of Session in Scotland that this was not sufficient to satisfy the statute.

² *Neilson v. James* (1882), 9 Q.B.D. 546; 51 L.J. Q.B. 369; 46 L.T. 791; *Perry v. Barnett* (1885), 15 Q.B.D. 388; 54 L.J. Q.B. 466; 53 L.T. 585; *Coates v. Pacey* (1892), 8 T.L.R. 351, 474; and see *Barclay v. Pearce* (1894), 15 Q.B.D., p. 390, n. 3.

³ *Coates v. Pacey*, *supra*.

⁴ (1885), 14 Q.B.D. 460; 54 L.J. Q.B. 347.

cerned, by the Gaming Act of 1892. But if, and in so far as the principle there laid down is applicable to cases which are not concerned with gaming, it is apparently still good law; and therefore the alteration of the law as laid down in *Read v. Anderson* does not necessarily imply the overruling of *Seymour v. Bridge*. But the decision in *Seymour v. Bridge* proceeded upon different lines from those upon which *Neilson v. James*, *Perry v. Barnet*, and *Coates v. Pacey* were decided. The decision in the first case turned upon the question what the authority was with which the broker was invested by the client in the particular case; while in the other cases the decisions of the Court of Appeal were based upon the unreasonableness of the custom as against any one who was not aware of it. Mr. Justice Mathew might possibly have found in *Seymour v. Bridge* that the defendant had notice of the custom to disregard the Act; for if he must be taken to have been aware of the Act and had on various occasions received contract notes which contravened it, he might perhaps also be taken to have been aware of the custom which was the reason for contravening it. Had it been found that the defendant was aware of the custom at the time when he authorized the contract to be made, the decision would have been the same as it was, while it would have been on the same lines as the cases in the Court of Appeal. It is noticeable that in *Coates v. Pacey*, in which case the facts were very similar to those in *Seymour v. Bridge*—excepting that in *Coates v. Pacey* the defendant's business with her broker had been conducted through an agent—the jury found that although she had on several previous occasions bought bank shares in a similar manner, she had no notice of the custom, and the Court of Appeal, affirming the decision, stated that an authority to an agent to contract must *primâ facie* be taken to be an authority to make a valid and enforceable contract. Whether these decisions are reconcilable, or, if not, which of the two principles is likely to be applied in the future consideration of a similar state of facts, it is, of course, impossible to say with certainty. But as there can be no doubt in which

direction the weight of authority tends, it seems probable that future decisions will follow the line taken in the Court of Appeal and not that taken in *Seymour v. Bridge*.

But in order to be effectual the repudiation of a contract which transgresses Leeman's Act should be definite and should be made without delay. For indefiniteness or undue delay in repudiation may be held to amount to ratification, and may constitute the principal equitable owner of the shares, in which case he will be obliged to indemnify the vendor against all loss incurred.¹

SECTION IV.—FRAUD.

The fact that one of the parties to a contract, whether made on the Stock Exchange or elsewhere, has been induced to enter into it through the fraud or misrepresentation of the other party will relieve him of the obligation of fulfilling his part of the contract, provided that he repudiates the contract and retains no benefit under it, and will generally enable him to obtain its rescission. Such a contract, however, is not void, but merely voidable at the option of the party misled, who must therefore elect whether he will carry it out or be relieved from performance before the interests of persons other than the original parties to the contract have intervened. For when once innocent third parties have, in reliance on the fraudulent contract, acquired rights which would be defeated by its rescission, the option to avoid the contract will be lost,² and the aggrieved party will be left to recoup himself for any loss incurred by an action for deceit against the person who misled him, if the conditions necessary for such an action exist. For in order to found an action for deceit the representation must be not only untrue, but untrue to the knowledge of the party making it, or made by him with a reckless disregard of its truth or falsehood; it

¹ *Loring v. Davis* (1886), 32 Ch. D. 625; 55 L.J. Ch. 725; 54 L.T. 899; 34 W.R. 701.

² *Tennent v. City of Glasgow Bank* (1879), 4 App. Cas. 615; 40 L.T. 694; 27 W.R. 649.

must be made with the intention that the injured party shall act upon it, or, at any rate, in contemplation that he may act upon it; and the injured party must actually have acted on the representation and have been injured in consequence.¹

In *Bedford v. Bagshaw*² the director of a company, in order to obtain a quotation upon the Stock Exchange, gave to the Committee false information as to the number of shares allotted and paid for. In consequence the Committee granted a special settling-day, and allowed a quotation in the official list. The plaintiff, knowing of the Stock Exchange rules regarding special settlements, took shares in the belief that the necessary amount had been subscribed. The shares proved to be valueless, and the Court of Exchequer held that an action could be maintained against the defendant for false and fraudulent representations made by him. "The defendant," said Pollock, C.B., "acted fraudulently, and made representations to the Committee of the Stock Exchange with a view to induce persons to believe the existence of a particular state of things as to these shares. All persons buying shares upon the Stock Exchange must be considered as persons to whom it was contemplated the representations would be made. I am not prepared to lay down, as a general rule, that if a person makes a false representation every one to whom it is repeated, and who acts upon it, may sue him. But it is a different thing where a director of a company procures an artificial and false value to be given to the shares in the company which he professes to offer to the public. Generally, if a false and fraudulent statement is made with a view to deceive the party who is injured by it, that affords a ground of action. But I think that there must always be this evidence against the party to be charged, viz. that the plaintiff was one of the persons to whom he contemplated that the representation should be made, or a

Special
settlement
obtained
by fraud.

¹ *Edgington v. Filtzmaurice* (1885), 29 Ch. D. 459, 482; 55 L.J. Ch. 650; 53 L.T. 369; 33 W.R. 911; *Derry v. Peek* (1889), 14 App. Cas. 337; 58 L.J. Ch. 864; 61 L.T. 265; 38 W.R. 33.

² (1859), 4 H. & N. 538; 29 L.J. Ex. 59. See too *Bagshaw v. Seymour* (1856), 18 C.B. 903; 29 L.J. Ex. 62, n.

person whom the defendant ought to have been aware he was injuring or might injure. If a director of a company, one of the persons who puts the shares forth into the world, deliberately adopts a scheme of falsehood and fraud, the effect of which is that the parties buy the shares in consequence of the falsehood, I should feel no difficulty in saying that in such a case an action is maintainable."

The Chief Baron's judgment was approved by Sir W. Page Wood, V.C., in *Barry v. Croskey*.¹ But in *Peek v. Gurney*² the decision met with a somewhat severe criticism. "The actions," said Lord Chelmsford,³ "were brought upon the allegation of a false representation made to the plaintiff. But no representation at all was made which reached either his eyes or his ears. From his knowing the rules of the Stock Exchange he assumed that a certain representation had been made, and he acted upon it. According to the judgment, it was his knowledge of the rules which led him to appropriate the representation to himself, and therefore it could not be taken to be made to any one who was ignorant of these rules. The decisions, and the grounds on which they proceeded, appear to me to be extraordinary, and I cannot bring my mind to agree with them."

Peek v. Gurney is clearly distinguishable from *Bedford v. Bagshaw*, for while a prospectus has done its work when it has drawn the original subscribers, a quotation in the official list, such as was obtained in *Bedford v. Bagshaw*, is a representation to all future intending purchasers of the status of the company, which, although not communicated so directly as are statements contained in a prospectus, is nevertheless communicated sufficiently clearly to those who know the rules of the Stock Exchange. And as all purchasers receive an express notice of the rules, and are taken to have knowledge of them for the purpose of being bound by them, when it is not to their interest to have such knowledge, it would perhaps seem only fair that they should be taken to

¹ (1861), 2 J. & H. 1.

² (1873), L.R. 6 H.L. 377; 43 L.J. Ch. 19; 22 W.R. 29.

³ L.R. 6 H.L. 397.

know them when to do so would be to their advantage. The effect which a knowledge that a special settlement had been granted to a company, and an official quotation to its shares, would necessarily have on the minds of persons acquainted with the regulations of the Committee as to special settlements, would undoubtedly be that the Committee, from information received from responsible persons, had considered the company of sufficient importance and as probably having a wide enough market to justify them in affording increased opportunities for the circulation of its shares among the public by fixing a special settling-day for bargains done in them. And in the absence of any further authority on the point, it might be doubtful whether the *dicta* of the judges in *Peek v. Gurney* could be taken as overruling the express decision in *Bedford v. Bagshaw*. Within the last few years, however, a somewhat similar state of facts has come before the courts in the case of *Salamon v. Warner*,¹ and although perhaps it was not necessary to the actual decision in that case that the point which arose in *Bedford v. Bagshaw* should be decided, still the learned judges who tried the case seem to have been so unanimously of opinion that *Bedford v. Bagshaw* could not now be supported, that it must be taken that if the state of facts presented in that case were to occur again, the loss suffered by the injured party would be held to be too remote, and he could not successfully found a claim for damages upon it.

The facts as set out in the statement of claim in *Salamon v. Warner*,¹ were as follows: The plaintiff, who was a jobber on the Stock Exchange, on the strength of a prospectus which the defendants procured to be issued on the bringing out of Warner's Safe Cure Company, sold shares before allotment for the special settling-day to brokers who had been instructed by the defendants to contract on the Stock Exchange for the purchase of the shares. The defendants then procured an allotment of a very large majority of the

¹ (1891), 64 L.T. 598; 7 T.L.R. 431; affirmed, 65 L.T. 132; 7 T.L.R. 484.

shares to their own nominees, and subsequently induced the Committee of the Stock Exchange to grant a special settling-day. In consequence of the control of the shares which the defendants had obtained, the plaintiff, when called upon to deliver, was only able to do so at a price dictated by the defendants, and incurred a very heavy pecuniary loss. But it was held that even if the facts as stated in the claim were correct,¹ the plaintiff could not recover damages from the defendants on the ground of fraud, because his contracts were made on his own judgment as to the company's chances of success, and on the faith of the prospectus which was not, at any rate directly, fraudulent; and that, although upon the facts as stated there undoubtedly was a conspiracy to obtain a special settlement by means of misleading statements, such conspiracy would merely render the conspirators liable to criminal proceedings, and would not give rise to civil liability, unless an individual member of the public could show that his rights had been thereby invaded.

Cornering
the market.

The facts in *Salamon v. Warner*, as stated for the plaintiff, afford an instance of a method of dealing known as "cornering the market." The process consists in getting into the hands of the person creating the corner, or his nominees, so large a number of shares in a particular undertaking as will practically give him a complete control over all transactions connected with the undertaking. There is not, of course, anything essentially illegal in such a process; but it may become illegal if used for the purpose of perpetrating a fraud. "Rigging the market" is a somewhat different method of dealing, which is employed to induce the public to purchase the shares of a new company by creating an artificial price in the market by means of transactions which, if not actually fictitious, are not *bonâ fide*, but are made at a nominal premium with the sole object of drawing purchasers. When two or more persons combine with the intention of obtaining purchasers by such

Rigging
the market.

¹ *Salamon v. Warner* was decided upon a question of pleading, and the courts were not called upon to give judgment on the facts.



means, or of making purchasers pay more for the shares than they would otherwise have been obliged to do, they are guilty of a conspiracy to defraud.¹ The fraud is one which is "levelled against all the public, for it is against all such as may possibly have anything to do with the funds on that particular day."² The remedy for this fraud consists, primarily, in criminal proceedings for conspiracy. Whether there is a sufficiently direct communication, in this case, between the conspirators and the party defrauded to entitle the latter to maintain an action for damages is perhaps doubtful, in the face of the *dicta* in *Peek v. Gurney* and *Salamon v. Warner*. Where fraud is perpetrated to obtain a special settlement, the direct object of the false representations is to deceive the Committee—and the deceiving of the public is only an indirect though an important object—while in the case of rigging the market, the only object is to deceive the public. The question, then, is whether, in the latter case, there is a sufficient communication to entitle the injured party to damages which he could not obtain in the former. In the case of rigging the market, the parties are certainly a step nearer to each other than where the fraud is for the purpose of obtaining a special settlement. But the communication of the misrepresentations—if communication there be—is through the same source, namely, the publication of the day's prices in the official list and the daily papers; and it hardly seems to be probable that if the injured party cannot recover in the one case, he can in the other. But even if this is so, there will undoubtedly be a good defence to an action by one of the conspirators on a contract induced by the fraud, if the conspirator cannot prove his case without showing his own guilt, for *nemo allegans suam turpitudinem est audiendus*.

The contract between the conspirators themselves for the perpetration of the fraud is an illegal contract, which

Action between conspirators.

¹ *Rez v. De Berenger* (1814), 3 M. & S. 67; *Reg. v. Aspinall* (1876), 2 Q.B.D. 48; 46 L.J. M.C. 145; 36 L.T. 297; 25 W.R. 283; *Scott v. Brown* [1892], 2 Q.B. 724; 61 L.J. Q.B. 738; 67 L.T. 782; 41 W.R. 116.

² *Rez v. De Berenger*, 3 M. & S., at p. 72.

does not give rise to any rights enforceable in a court of law. In an action on such a contract, even if the illegality is not pleaded by the defendant, the Court will take notice of it if proved by the evidence adduced by the plaintiff, and will refuse to assist the plaintiff on the ground that *ex turpi causa non oritur actio*.¹

¹ *Scott v. Brown, supra.*

CHAPTER X.

REMEDIES.

i. Buying-in—ii. Selling-out—iii. Damages—iv. Specific Performance.

WHEN a contract which has been made on the Stock Exchange is not duly carried out by one of the parties, the injured party may obtain redress either by the methods peculiar to the Stock Exchange, or by process of law. In the first case the remedy will consist in buying in or selling out the securities, as the party injured is buyer or seller; in the second, in an action for damages or specific performance.

BUYING-IN.

If securities have been purchased, but have not been duly delivered by the seller, the purchaser's remedy, under the rules of the Stock Exchange, is to buy them in against the seller, who is then responsible for any loss occasioned by the default. The buying-in must be effected publicly by the officials of the Buying-in and Selling-out Department, who trace the transaction to the responsible party and claim the difference.¹

The right of buying in is, however, subject to modifications. The rule may be suspended by a resolution of the Committee in cases in which it would work unfairly. And when bonds, shares, or other securities are known to be out of the control of the seller for the payment of calls, or the

Modifica-
tions of
right.

¹ Rule 71.

receipt of dividends or bonus, the purchasing broker is not allowed to buy them in until, on application being made to the Committee, they specify a day on which the right may be exercised.¹

Times for
exercising
right, etc.

The time within which securities, which have been purchased but not delivered, are to be bought in, varies according to the class of security in which the bargain is made.² If the ultimate buyer allows the given time to elapse without buying in, or, at least, without attempting to buy in, his immediate seller is discharged from liability, unless the delay occurred at the request or with the consent of such seller.³ In the case of securities deliverable by deed and of bearer securities, public notice of the intention to buy in must be given by posting it in the Exchange, and any loss occasioned will be borne by the person who is responsible for the non-delivery of the securities.⁴ When stock or shares have been thus bought in, and are not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, they may be repurchased for immediate delivery, and the member who causes the repurchase will be obliged to bear the loss.⁵ On the sale of securities deliverable by deed, the seller must be allowed a reasonable time to obtain such verification as is required before the securities are bought in against him.⁶

SELLING-OUT.

The remedy which the Stock Exchange regulations afford to the seller of securities for failure on the part of the purchaser to pay for them is the resale of the securities after a given time, and the debiting of the purchaser with any loss occasioned thereby. As in the case of buying in, the selling-out must be effected publicly by the officials of the Buying-in and Selling-out Department.⁷

¹ Rule 72.

³ Rules 106, 119.

⁶ Rules 105, 118.

² Rules 83, 105, 118.

⁴ Rules 105, 118.

⁵ Rule 102.

⁷ Rule 71.

The time for selling out varies as the securities for which tickets are not duly delivered are Government or corporation stocks,¹ securities deliverable by deed of transfer,² or bearer securities.³ If the seller of English, India, or corporation stock does not receive a transfer-ticket by one o'clock, or by a quarter to one on a settling-day, he is entitled to demand a sum of two shillings and sixpence for each transfer fee actually paid for the transfer of such stock, or for every £1000 stock respectively.⁴ If the seller of securities deliverable by deed allows two clear days to elapse without availing himself of his right to sell out, his immediate buyer is released from liability in cases in which the failure to pass the ticket is due to the declaration of any member as a defaulter;⁵ and where such securities are sold out and a ticket is not given within half an hour after the time of sale, they may be transferred into the name of the buyer.⁶

Time for
selling out,
etc.

While the above methods of redress are peculiar to the Stock Exchange, the remedies which the law grants for the breach of a Stock Exchange contract are those to which any other breach of contract gives rise. When a money payment will sufficiently compensate the injured party for the loss which he has suffered, or where the party who has done the wrong has put it out of his power to fulfil the contract, the remedy will consist in damages. But where, owing to the nature and scarcity of the security in which the bargain is made, a pecuniary compensation would not be an adequate remedy, then, provided that the party causing the breach still has it in his power to carry out the contract, the Court will compel him to do so, or, in other words, will grant specific performance of the contract.⁷

¹ Rules 81, 82.

² Rule 103.

³ Rule 115.

⁴ Rule 81.

⁵ Rule 103

⁶ Rule 104.

⁷ *Adderley v. Dixon* (1821), 1 Sim. & Stu. 607.

DAMAGES.

Evidence-
entries in
broker's
day-book.

In considering the admissibility of evidence in the case of a claim for indemnity or damages, it is noticeable that apparently an entry in the day-book of a deceased broker cannot be put in as a declaration made by a deceased person, since it is neither a declaration against direct pecuniary interest, which could not under any circumstances have been made available in the interests of the person making it, nor is it an entry made in the discharge of a duty to do a particular act and make a record of it.¹ In *Massey v. Allen*² the plaintiff's claim was for an indemnity in respect of two hundred shares which were alleged to have been transferred into the plaintiff's name as trustee for the defendant. The plaintiff wished to prove that the shares had been bought on the Stock Exchange through his own broker for the defendants. The broker was dead, and the plaintiff tendered in evidence an entry in the broker's day-book of the purchase of two hundred shares by the broker for the defendant. The entry was proved to be in the handwriting of the broker, and to have been made by him in the ordinary course of business at the time of the purchase as a memorandum of the transaction. It was also proved that the ledger was made up from the day-book. The plaintiff contended that the entry was admissible as a declaration made by a deceased person, in the first place, because it was made against the pecuniary interest of the person making it; and, secondly, because it had been made in the ordinary course of business. Vice-Chancellor Hall, however, held that the entry was not admissible upon the first ground, because it might, according to the turn of the market, have been to the advantage of the deceased,³ nor upon the second

¹ *Smith v. Blakey* (1867), L.R. 2 Q.B. 326; 36 L.J. Q.B. 156; 15 W.R. 492.

² (1879), 13 Ch. D. 558; 49 L.J. Ch. 76; 41 L.T. 788; 28 W.R. 212.

³ It is difficult to understand the ground of the Vice-Chancellor's first objection, for unless the transaction was merely a wager between broker and principal, as this clearly was not, the broker would receive the same commission in any case, and it would make no difference to him personally whether the market rose or fell.

ground, because it was not made in the performance of any duty.

If securities which have been borrowed are sold by the borrower, the lender is at liberty to claim the amount which has been realized by such sale. But if he does not do so, or if for any other reason there is a failure to re-deliver the securities at the stipulated time, or on demand if a time has not been fixed for their return, a question will arise as to the proper measure of damages.

Detention of borrowed securities.

In cases in which stock which has been lent is not duly returned, damages will be assessed upon a different principle from that adopted in ordinary cases of non-delivery, on the ground that in actions for not replacing stock the borrower holds in his hands the money of the lender, and thereby prevents him from going into the market and himself replacing it, as he might do if the money remained in his hands.¹ Where, therefore, the owner of securities has placed them in the possession of another and they are not duly re-delivered, the measure of damages will be the value of the securities taken at such a rate as will, so far as is possible, place the lender in the same position as he would have been in had the contract been carried out. Accordingly, if the securities have risen in value since the date when they should have been re-delivered, the damages will be their value on or immediately before the day of trial; and it is no answer to say that the defendant may be prejudiced by the plaintiff's delay in bringing the action, as the defendant is at liberty to replace the securities at any time, and thus avail himself of the rising market.² But the plaintiff cannot

Principles on which damages assessed.

(i.) Where securities have risen in value.

¹ *Gainsford v. Carroll* (1823), 2 B. & C. 624. Applying these principles to cases in which securities have been deposited in return for a loan of money, the ordinary methods of assessing damages would appear to be correct, for in that case the borrower of the money would hold it until the securities he had pledged were returned to him, and he might accordingly expend it in the purchase of securities of a like description and amount.

² *McArthur v. Seaforth* (1810), 2 Taunt. 257. See also *Shepherd v. Johnson* (1802), 2 East, 211; *Downes v. Black* (1816), 1 Stark. 318; *Harrison v. Harrison* (1824), 1 C. & P. 412; *Owen v. Routh* (1854), 14 C.B. 327; 23 L.J. C.P. 105.

recover the highest price which the stock reached between the time of default and the time of trial, unless he can show that he actually would have made such a profit, for otherwise to assess the damages at that price would be to give the plaintiff a merely speculative profit.¹ Nor can the plaintiff claim damages for the loss of a profit which he might have made if he had had the securities in his possession—at all events unless he has communicated to the defendant his wish to have them back for that purpose.²

(ii.) If the securities have fallen in value.

On the other hand, where the securities have fallen in value, it has in one instance been held that the measure of damages was their value at the date agreed upon for their return;³ in another case, their value at the time when the stock was actually retransferred.⁴ It is submitted that the former principle is the more correct in this case, as to adopt the latter would encourage delay on the part of the borrower if there seemed to be a probability of a further fall in the market.⁵

Where the borrower or other deposittee of securities wrongfully detains them against the true owner, but gives them up before action, the stock having fallen in value during such detention, the true owner is entitled to substantial damages.⁶

Remote-
ness of
damage.

It may, however, be that the damages caused by the detention are too remote to be recovered in a court of law. Where, for instance, the loss consisted in an inability to pay

¹ *M'Arthur v. Seaforth, supra*; *Simmons v. London Joint Stock Bank* [1891], 1 Ch., at p. 284.

² *M'Arthur v. Seaforth, supra*. And see the judgment of Bowen, L.J., in *Williams v. Peel River, etc., Co.* (1887), 55 L.T., at p. 693.

³ *Saunders v. Kentish* (1799), 8 T.R. 162.

⁴ *Forrest v. Elwes* (1799), 4 Ves. 492.

⁵ *Williams v. Peel River, etc., Co.* (1877), 55 L.T. 689.

⁶ See *Dutch v. Warren*, cited in 2 Burr. 1010, where, in an action to recover £262 10s. paid for shares which the defendant subsequently refused to deliver, the plaintiff recovered only £175, their value at the date fixed for delivery. It can scarcely now be contended that such a measure of damages is correct. For a discussion as to its correctness, see Mayne on Damages, 5th edit., pp. 185-190.

deposits which would have entitled the plaintiff to an allotment of shares, owing to the non-return of certain scrip which had been lodged as security, it was held that the loss was too remote and that damages were not recoverable.¹

Where the seller of securities fails to deliver, the purchaser is entitled to be placed, as far as possible, in the same position as if the contract had been duly carried out. The damages will therefore be the market value of the securities at, or within a reasonable time after, the date at which they should have been delivered.² If the securities are not procurable in the market, a jury will have to assess damages at an amount which will reasonably compensate the plaintiff. If shares which are not fully paid-up are handed over in fulfilment of a contract for fully paid shares, the damages will be the amount remaining unpaid.³

Failure of vendor to perform the contract.

When shares in a projected undertaking are sold, the contract will be satisfied by the tender of a letter of allotment if, from the circumstances, the inference can be drawn that the parties dealt upon the footing of such letter being equivalent to scrip. Consequently there may be a complete breach of such a contract before the actual existence of any scrip or shares properly so called, and in that case the purchaser may recover as damages for non-delivery the difference

¹ *Archer v. Williams* (1846), 2 C. & K. 26.

² See *Shaw v. Holland* (1846), 15 M. & W. 136; 15 L.J. Ex. 87. What constitutes a reasonable time will to a large extent depend on the securities in respect of which the contract is made. Generally it will be the day of the breach, or the following day, or so soon after as securities of a similar description can usually be sold; see *Waddell v. Blockey* (1879), 4 Q.B.D. 678; 48 L.J. Q.B. 517; 41 L.T. 458; 27 W.R. 938. In the case of a non-current security, the only complete remedy is specific performance, but failing that, the damages will be such as a jury consider will reasonably compensate the purchaser. For the admissibility of evidence as to a reasonable time, see *Stewart v. Cauty* (1841), 8 M. & W. 160; 10 L.J. Ex. 348.

³ *Mudford's Claim* (1880), 14 Ch. D. 634; 49 L.J. Ch. 452; 42 L.T. 825; 28 W.R. 670; *Ex parte Appleyard* (1881), 18 Ch. D. 587; 50 L.J. Ch. 554; 45 L.T. 552; 30 W.R. 170.

between the price agreed upon, and the market price on the day on which the sale should have been completed by delivery of the letter of allotment; but he is not entitled to damages in respect of a further advance in price taking place subsequently at the time of the actual issuing of the scrip.¹

Failure of
purchaser
to accept
delivery.

If a purchaser fails to accept securities which he has bought, the measure of damages will be the amount of the loss, if any, which the vendor incurs upon a re-sale, provided that such re-sale takes place within a reasonable time.² But the vendor is not obliged to sell at all, though if he refrains from selling at the time of the breach he takes upon himself all risk of further depreciation, for he may not inflate the damages at the expense of the purchaser by neglecting to sell when he has the opportunity to do so.³ In *Pott v. Flather*⁴ the defendant purchased scrip railway shares from the plaintiff at 25s. premium on the 20th of October, but the scrip was not issued until the 24th. On the 21st the shares fell to 14s. premium, and on the evening of that day the plaintiff gave notice that he would not accept them. On the 22nd they had fallen to 8s. premium, and continued to fall until the 6th of December, when, after notice to the defendant, they were sold at 17s. discount. In an action for not accepting or paying for the shares, the measure of damages was held to be the difference between the prices on the 20th and on the 22nd of October, and not at the date at which they were actually sold.

If a correspondence respecting the repudiation of the shares has extended over a considerable period, it will be for a jury to fix the date at which the contract was finally repudiated, and to assess damages accordingly.⁵

¹ *Tempest v. Kilner* (1846), 3 C.B. 249.

² *Stewart v. Cauty* (1841), 8 M. & W. 160; 10 L.J. Ex. 348. As to what constitutes a reasonable time, see note 2, p. 213, *supra*.

³ *Samuel v. Rowe* (1892), 8 T.L.R. 488.

⁴ (1847), 5 Rail. Cas. 85; 16 L.J. Q.B. 366.

⁵ *Barned v. Hamilton* (1841), 2 Rail. Cas. 624.

When securities are unsaleable the damages for non-acceptance will be the full price, if any, named in the contract.¹ If a price is not named, the damages will be such sum as a jury will award.

Unsaleable securities.

If, owing to the principal's refusal to accept delivery of securities which have been purchased by his instructions, such securities are left upon the broker's hands, the latter may adopt one of two courses. He may either sell the securities at the market price of the day, or, if it is to the advantage of the principal that he should do so, he may have a fair valuation of the securities made, and may personally take them over at such valuation. In either case he is entitled to claim from his principal any loss which he suffers from the principal's refusal to accept delivery.²

Broker's right to damages on principal's non-acceptance.

When a broker has, fraudulently or otherwise, sold to his principal securities of his own instead of purchasing them in the market, the principal is entitled, on discovering the facts, to hand back the securities if he still holds them, and demand the return of his money. If he has parted with them and has incurred loss, he is entitled to claim as damages from the broker, not the amount of the loss which he has actually suffered, however long after the original sale the re-sale took place, but such a sum as he would have lost if he had resold the securities within a reasonable time after purchasing. He cannot claim damages for loss occasioned by his own act in retaining the securities.³

Sale by broker of his own securities.

If a broker has held himself out as having authority to purchase or sell securities on a principal's account, when he has in fact no such authority, he will be personally liable to the party with whom the contract is made, on the ground that there was an implied warranty that he had the authority which he professed to have. The damages in cases of breach of warranty of authority are the amount of the loss which

Breach of warranty of authority.

¹ *Ex parte Panmure* (1883), 24 Ch. D. 367; 53 L.J. Ch. 57; 50 L.T. 38; 32 W.R. 236.

² *Walter v. King*, the *Times*, March 10, 1897.

³ *Waddell v. Blockey* (1879), 4 Q.B.D. 678; 48 L.J. Q.B. 517; 41 L.T. 458; 27 W.R. 933.

the plaintiff has actually sustained by losing the particular contract which was to have been made by the alleged principal—in other words, the profit which the plaintiff would have obtained from the contract which the broker warranted should be made.¹

Wrongful
sale by
broker.

If a broker has wrongfully sold out securities belonging to his principal, the damages will depend upon the fluctuations which have taken place in the price of the shares since the date of the wrongful sale.²

Refusal
to register.

Section 35 of the Companies Act, 1862,³ enacts that if the name of any person is, without sufficient cause, entered on or omitted from the register of members of any company under that Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the Court may, if satisfied of the justice of the case, order the rectification of the register, and award to the aggrieved party such damages as he has sustained, the measure of damages being the value of the shares at the time of the refusal to register.⁴ But where the contract between vendor and purchaser contains special terms of which the company has not received notice, and in consequence of a delay by the company in registering the transfer, and a fall in the value of the shares, the vendor loses a price which he would have obtained but for such delay, he cannot recover from the company more than nominal damages.⁵

¹ *Ex parte Panmure* (1883), 24 Ch. D. 367; 53 L.J. Ch. 57; 50 L.T. 38; 32 W.R. 236.

² See *Murray v. Hewitt* (1886), 2 T.L.R. 872; *Samuel v. Rowe* (1892), 8 T.L.R. 488.

³ 25 & 26 Vict. c. 89; and see *Balkis Consolidated Co. v. Tomkinson* [1893], A.C. 396; 63 L.J. Q.B. 134; 69 L.T. 598; 42 W.R. 204.

⁴ *In re Ottos Kopye Diamond Mines* [1893], 1 Ch. 618; 62 L.J. Ch. 166; 68 L.T. 138; 41 W.R. 258. Apparently the Court has no jurisdiction in case of a summons under this section to direct a company to pay damages, except in cases in which an order is made for rectification of the register; a party who fails to obtain rectification, or who merely desires damages, is obliged to bring an action at common law: *Ibid.*

⁵ *Skinner v. City of London Marine Insurance Corporation* (1885), 14 Q.B.D. 882; 54 L.J. Q.B. 437; 53 L.T. 191; 33 W.R. 628.

SPECIFIC PERFORMANCE.

Specific performance of contracts will, as a general rule, only be decreed where damages would fail to put the plaintiff in as favourable a position as he would have enjoyed had the contract been carried out.¹ Where, therefore, there is always a sufficient amount of a security in the market to satisfy the requirements of any one who desires to buy, a purchaser cannot obtain specific performance of a contract to deliver it, his remedy lying in an action for damages. It has accordingly been held that an action will not lie for specific performance of an agreement to deliver stock, since it is always readily procurable by a would-be purchaser.² But shares are on a different footing, and specific performance will be granted of an agreement to deliver them. "Now, I agree," said Vice-Chancellor Shadwell, in *Duncuft v. Albrecht*,³ "that you cannot have a bill for specific performance of an agreement to transfer a certain quantity of stock. But, in my opinion, there is not any sort of analogy between a quantity of three per cents. or any other stock of that description (which is always to be had by any person who chooses to apply for it in the market) and a certain number of railway shares of a particular description, which railway shares are limited in number, and which, as has been observed, are not always to be had in the market. And as no decision has been produced to the contrary, my opinion is that they are a subject with respect to which an agreement may be made which this court will enforce." The Vice-Chancellor's decision as to the compulsory enforcement of a contract to take shares has been followed in numerous subsequent

Principles on which the remedy granted.

Applicable to shares but not to stock.

¹ *Adderley v. Dixon* (1824), 1 Sim. & Stu. 607.

² *Cuddee v. Rutter*, 1 L.C. Eq., vol. i. 907.

³ (1841), 12 Sim. 189. And see *Wilson v. Keating* (1859), 7 W.R. 484; *Shaw v. Fisher* (1855), 5 De G. M. & G. 596; *Cheale v. Kenward* (1858), 3 De G. & J. 27; 27 L.J. Ch. 784; *M'Devitt v. Connolly* (1885), 15 L.R. Ir. 500.

cases;¹ and as, since the decision in *Cuddee v. Rutter*,² many county and corporation stocks have been created, which are as strictly limited in amount as are a company's shares, and to which, therefore, the Vice-Chancellor's remarks appear to be equally applicable, it is probable that in the case of many of the stocks now in existence specific performance would be granted of a contract for their delivery.

Applicable though directors refuse transfer.

Specific performance may be granted although no instalments have been paid upon the shares,³ though the transfer has not been executed by the parties,⁴ and though the directors of the company refuse to recognize the transfer when executed.⁵ But in the last case the purchaser will have merely an equitable title to the shares, the legal ownership continuing in the vendor.

Applicable to part of a contract.

When the contract to take shares in a company is in part a fraud upon the company, specific performance will be granted of such part as is not fraudulent if the parties contemplated a piecemeal performance.⁶ If a contract has been entered into for the sale of shares, and one of the parties

¹ *Wynne v. Price* (1849), 8 De G. & S. 310; *Shaw v. Fisher* (1855), 5 De G. M. & G. 596; *Evans v. Wood* (1867), L.R. 5 Eq. 9; 37 L.J. Ch. 159; 17 L.T. 190; 16 W.R. 67; *Hawkins v. Maltby* (1867), L.R. 3 Ch. 188; 38 L.J. Ch. 58; 17 L.T. 397; 16 W.R. 209; *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247; *Paine v. Hutchinson* (1868), L.R. 3 Ch. 388; 37 L.J. Ch. 485; 18 L.T. 380; 16 W.R. 553; *Shepherd v. Gillespie* (1868), L.R. 3 Ch. 764; 38 L.J. Ch. 67; 19 L.T. 196; 16 W.R. 1133; *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496; 37 L.J. Ch. 837; 16 W.R. 1078; *Shepherd v. Murphy* (1868), 16 W.R. 948.

² 1 L.C. Eq. vol. i. 907.

³ *Cheale v. Kenward* (1858), 3 De G. & J. 27; 27 L.J. Ch. 784.

⁴ See *Evans v. Wood* (1867), L.R. 5 Eq. 9; 37 L.J. Ch. 159; 17 L.T. 190; 16 W.R. 67; *Musgrave and Hart's Case* (1867), L.R. 5 Eq. 193; 37 L.J. Ch. 161; 17 L.T. 313; 16 W.R. 247; *Hawkins v. Maltby* (1867), L.R. 3 Ch. 188; 37 L.J. Ch. 58; 17 L.T. 397; 16 W.R. 209; *Paine v. Hutchinson* (1868), L.R. 3 Ch. 388; 37 L.J. Ch. 485; 18 L.T. 380; 16 W.R. 553.

⁵ *Poole v. Middleton* (1861), 29 Beav. 646.

⁶ *Odessa Tramways Co. v. Mendel* (1877), 8 Ch. D. 235; 47 L.J. Ch. 505; 38 L.T. 731; 26 W.R. 887.

subsequently becomes bankrupt, his assignees in bankruptcy will be compelled to carry it out.¹

It has been held² that the purchaser of scrip certificates in a proposed railway company, which has not obtained an Act of Parliament, is not bound to take a transfer of the corresponding shares from the vendor when the Act has been passed. It is perhaps doubtful whether a similar decision would be given were the case to occur again. When the purchaser in *Jackson v. Cocker* bought the certificates, he no doubt supposed that he was purchasing the right to the shares when issued, and probably the vendor equally supposed that he was freeing himself from liability. If a purchaser, on buying scrip certificates, does not obtain a right to the shares, it is not easy to see what consideration he receives for his money. But if he obtains the right to demand delivery of the shares, it seems to be unreasonable that he should not also be compellable to take delivery.

Applic-
ability in
case of
scrip cer-
tificates.

¹ *Morris v. Cannan* (1862), 4 De G. F. & J. 581; 31 L.J. Ch. 425; 6 L.T. 521; 10 W.R. 589.

² *Jackson v. Cocker* (1841), 4 Beav. 59.

CHAPTER XI.

TRANSFERS.

Prepara-
tion of
transfer.

EXCEPT in the case of securities to bearer, the property in which is passed either by delivery or indorsement of the stock or share warrants, an instrument of transfer must be prepared. It is the custom of the Stock Exchange for the seller's broker to prepare this instrument, and no claim to the purchase-money arises until it has been tendered to the purchaser. In *Stephens v. De Medina*,¹ decided in the year 1843, a declaration by a purchaser of shares against the vendor for non-delivery of the shares, although the purchaser was ready and willing to pay for them, was, on special demurrer, held to be bad, for not averring that the plaintiff had tendered a conveyance. This decision was subsequently followed in the case of *Boulby v. Bell*,² and the Court was evidently of the same opinion in *Franklyn v. Lamond*.³ But in view of the custom to which reference has been made, these cases could scarcely be supported at the present time.

Transfer
by deed or
under
hand.

The form of the instrument will depend upon the constitution of the company, some companies requiring that the transfer shall be by deed, while in other cases a writing not under seal will be sufficient. And where the articles of association require a writing merely, a deed is not necessary, although the general practice of the company is to have one.⁴

Companies
Clauses
Consoli-
dation Act,
1845.

The shares of companies which are governed by the

¹ 4 Q.B. 422; 12 L.J. Q.B. 120.

² (1846), 3 C.B. 284; 16 L.J. C.P. 18.

³ (1847), 4 C.B. 637; 16 L.J. C.P. 221.

⁴ *Ex parte Sargent* (1873), L.R. 17 Eq. 273; 43 L.J. Ch. 425; 22 W.R. 815.

Companies Clauses Consolidation Act, 1845,¹ are transferable by deed only, which must be delivered to the secretary properly executed by the parties and duly stamped.² But in the case of companies incorporated under the Companies Act, 1862,³ the Act does not prescribe sealing, and the shares may apparently be transferred by an instrument not under seal.⁴ Companies Act, 1862.

With the above exception, the forms of the instrument of transfer given in the schedules to the two statutes are almost identical. The following is the form given in the first schedule to the later Act:—

I, A.B., of _____, in consideration of the sum of _____ paid to me by C.D. of _____, do hereby Form of transfer.
transfer to the said C.D. the share [or shares] numbered _____, standing in my name in the books of the _____ Company, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution hereof; and I, the said C.D., do hereby agree to take the said share [or shares], subject to the same conditions. As witness our hands the _____ day

Under the Act of 1845 the transfer was to be made in the form given in the schedule, or in a form to the like effect. But the qualifying words did not admit of any great divergence from the statutory form, and the secretary of a company was held to be justified in refusing to register a transfer which was in an inconvenient form owing to the inclusion of other descriptions of property besides the shares.⁵

The Stamp Act, 1815,⁶ requires that the amount of the Duty on transfer.

¹ 8 Vict. c. 16.

² *Copeland v. North Eastern Railway Co.* (1856), 6 E. & B. 277; *Nanney v. Morgan* (1887), 37 Ch. D. 346; 57 L.J. Ch. 311; 38 L.T. 238; 36 W.R. 677.

³ 25 & 26 Vict. c. 89.

⁴ *Ex parte Sargent, supra.*

⁵ *Copeland v. North Eastern Railway Co.* (1856), 6 E. & B. 277; *Reg. v. General Cemetery Co.* (1856), 6 E. & B. 415.

⁶ 55 Geo. III. c. 184. See now the Stamp Act of 1891 (54 & 55 Vict. c. 39), s. 58 (5).

consideration inserted in the transfer, and on which the duty payable is calculated, shall be the sum paid by the ultimate purchaser. This may, of course, be either higher or lower than that which the vendor receives. It is usual to append to the transfer an explanatory note as to this, and it is doubtful whether, in the absence of such a note, the vendor would not be justified in refusing to sign the transfer.¹

Transfers
at the
Bank of
England.

The following is the method of transferring securities which are transferable at the Bank of England:—

A special form of ticket is procured at the Bank, which is duly filled in and passed by the purchaser's broker to the seller. With the ticket the broker also hands a stock receipt containing the principal's name, the amount of the stock purchased, and the amount of the purchase-money. If the ticket is in order, the seller attends at the Bank either personally or by attorney,² and hands the ticket into the Consol Office of the Bank before one o'clock. A clerk then makes out a transfer, which is signed by the seller or his attorney and witnessed by the clerk. If the seller is acting personally, or if his attorney is not a broker or banker, identification by a broker or banker is required,³ and is paid for by a percentage on the amount of stock transferred.

Fee pay-
able on
transfer.

On every transfer of stock at the Bank of England a fee is payable to cover stamps and other expenses, the amount being nine shillings on transfers of less than £25 of stock, and twelve shillings if the value of the stock is over £25.

¹ *Newburn v. Eaton* (1869), 20 L.T. 449; *Case v. McClellan* (1871), 25 L.T. 753; 20 W.R. 113.

² A power of attorney must be made out on a special form which is supplied by the Bank. The form is filled up and left at the Power of Attorney Office at the Bank of England before 12.30 on ordinary days, or eleven o'clock on Saturdays. The cost is 6s. 6d. for sums less than £20, and 11s. 6d. above that amount. If a transfer has taken place in consequence of a forged power of attorney, the Bank will be liable to re-invest the stock in the name of the original holder: *Sloman v. Bank of England* (1845), 14 Sim. 475; 14 L.J. Ch. 226; but the right to claim against the Bank may be lost by negligence on the part of the stockholder: *Coles v. Bank of England* (1839), 10 A. & E. 437; 9 L.J. Q.B. 36; *Bank of Ireland v. Evans's Trustees* (1855), 5 H.L.C. 389.

³ As to allowing a trustee's payments for identification, see p. 114, *ante*.

Shares in cost-book mining companies are usually transferred by a document in which the transferor acknowledges that he has transferred, and the transferee acknowledges that he has accepted shares. The document is signed by both parties, is addressed to the purser of the mine, and is the authority to the purser to register the transferee as a shareholder.¹

Cost-book
mining
companies.

If a seller of securities signs an instrument of transfer, but leaves blank spaces for the name of the transferee and the purchase-money, the effects of the instrument will differ according to the class of securities of which it purports to dispose. As has been pointed out,² it is not necessary that a contract for the sale of stock or shares should be by deed, or even in writing, though a deed or writing may be required for the actual transfer. So long, therefore, as there is a valid and binding contract for the sale, although the instrument of transfer is incomplete or inoperative, the seller is entitled to compel the purchaser to accept a transfer in the proper form and to obtain registration, while the purchaser can compel the seller to execute a transfer and to account for all incomings received since the date of the contract.

Blank
transfers.
(i.) In case
of sale.

It appears that if the seller of securities delivers the certificates with a blank transfer to a purchaser, he impliedly authorizes the latter to deal with the documents as his own. If a formal writing is not required to pass the property, the purchaser is entitled to fill up the blanks, and on the acceptance by the company of the transfer, he will become legal owner; or before becoming legal owner he may in turn transfer to a purchaser, the vendor in either case holding as trustee for the purchaser until registration.³ If, on the other hand, a deed is required, a transfer in blank is inoperative, and the filling in of the blanks by the purchaser does

(a) Where
formal
document
not neces-
sary.

(b) Where
deed
required.

¹ *Toll v. Lee* (1849), 4 Ex. 230; 18 L.J. Ex. 364; *Walker v. Bartlett* (1856), 18 C.B. 845; 25 L.J. C.P. 263. The authority to register will require a sixpenny stamp; see p. 229, *post*.

² Page 85, *ante*.

³ See *Lindley on Company Law* (5th edit.), p. 478.

not render it operative unless it can be shown to have been re-delivered since the blanks were so filled in.¹ But the purchaser is equitable owner, and is entitled to the execution of a valid transfer of the securities, and until a proper instrument is duly executed the vendor is trustee for him or for a purchaser from him.²

(ii.) In case of mortgage.

(a) right of mortgagee.

In the case of a mortgage by means of a blank transfer, it appears to be doubtful whether, in the absence of a special contract, the mortgagee has, strictly speaking, any right save to hold the certificates and transfer as security for the return of his money. At any rate, he is not entitled to transfer a larger right than he himself has obtained, and if he does so he is liable to the mortgagor for any damages which the latter may sustain through his act.

(b) right of sub-mortgagee dependent on notice.

The rights of a person who derives his title from the mortgagee will depend upon whether he has had notice of the title of the original mortgagor. If the mortgagee has filled in the transfer which he received in blank, and has obtained registration, so that he is to all appearances the legal owner, a holder for value from him, who has not had notice of the mortgagor's title, will be entitled to hold the securities against the mortgagor, provided that before receiving notice of the prior equitable title of the mortgagor,

¹ *Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20; 55 L.J. Q.B. 169; 54 L.T. 389; 34 W.R. 662. See also *Hibblewhite v. M'Morine* (1840), 6 M. & W. 200; *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603; aff. 2 H. & C. 175; 32 L.J. Ex. 273; 11 W.R. 862; *Taylor v. Great Indian Peninsular Railway Co.* (1859), 4 De G. & J. 559; 28 L.J. Ch. 285. A mere acknowledgment by the transferor of the deed after the blanks have been filled up, but while the deed is not in his possession nor under his control, does not render it valid and operative: *Tramways Union Co. v. Société Générale de Paris* (1884), 14 Q.B.D. 424; *Powell v. London and Provincial Bank* [1893], 2 Ch. 555; 62 L.J. Ch. 795; 69 L.J. 421; 41 W.R. 545. When a deed is invalid and incomplete, registration does not perfect the title of the transferee: *France v. Clark*, 26 Ch. D., at p. 262; *Powell v. London and Provincial Bank* [1893], 2 Ch., at pp. 560, 566.

² It seems that a deposit of share certificates accompanied by a blank transfer which is inoperative as a transfer is evidence that the deposit of the certificates was intended to operate as a security. See Lord Blackburn's judgment in *Colonial Bank v. Whinney* (1886), 11 App. Cas., p. 433.

he has obtained the legal title, or, at any rate, a legal right to be registered, so that some purely ministerial act alone remains to be done which, as between the transferee and the company, the company will be bound to do forthwith.¹ For if the legal title or right is acquired after notice of an existing equitable title, the latter will prevail,² unless, perhaps, the subsequent purchaser's legal title was almost complete at the time of notice, and after notice is completed by getting in the legal estate, when it appears that the legal owner will not as a general rule be deprived of the advantage which he has thereby obtained in favour of a person who has merely an equitable title.³

The receipt of a blank transfer signed by a third party is constructive notice to the receiver of the title of the signatory. For he knows that the instrument requires to be other than it was at the time when he received it in order to pass the property, and accordingly he is put upon inquiry as to the true title of the person from whom he received it. He cannot, therefore, fill up the blanks in his own favour, and claim to be a holder for value without notice of a prior claim, except to the extent of the sum due from the person who signed the transfer. In *France v. Clark*,⁴ the registered holder of shares in a company deposited the certificates as security for a loan of £150, giving the mortgagee at the same time a transfer signed, but with the

Blank transfer a constructive notice.

France v. Clark.

¹ *Roots v. Williamson* (1888), 38 Ch. D. 485; 57 L.J. Ch. 995; 58 L.T. 802; 36 W.R. 758; *Moore v. North Western Bank* [1891], 2 Ch. 599; 60 L.J. Ch. 627; 60 L.T. 456; 40 W.R. 93.

² *Nanney v. Morgan* (1887), 37 Ch. D. 346; 57 L.J. Ch. 311; 58 L.T. 238; 36 W.R. 677.

³ *Roots v. Williamson*, 38 Ch. D., pp. 497, 498, explaining *Dodds v. Hills* (1865), 2 H. & M. 424. The fact that securities are standing in joint names is not notice of a trust to persons buying or advancing money upon them, nor is it sufficient to put them upon inquiry: *Kaemena v. Central Bank of London* (1888), 4 T.L.R. 657.

⁴ (1884), 26 Ch. D. 257; 53 L.J. Ch. 585; 50 L.T. 1; 32 W.R. 466. See too *Sheffield v. London Joint Stock Bank* (1888), 13 App. Cas. 333; 57 L.J. Ch. 986; 58 L.T. 735; 37 W.R. 33; *Colonial Bank v. Cady* (1890), 15 App. Cas. 267; 63 L.T. 27; 39 W.R. 17; *Fox v. Martin* (1895), 64 L.J. Ch. 473.

consideration, date, and name of the transferee in blank. The mortgagee sub-mortgaged the shares as security for a loan of £250, and handed the blank transfer to the sub-mortgagee. After the death of the mortgagee the sub-mortgagee filled in the transfer with his own name, and stated £250 as the consideration. But it was held that he had no title as against the original mortgagor, except to the extent of £150 which the latter had received. For "he must necessarily have had notice that the documents required to be other than they were when he received them in order to pass any other or larger interest, as against the person whose name was subscribed to them, than the person from whom he received them might then actually and *bonâ fide* be entitled to transfer or create; and if he makes no inquiry he must at the most take that right (whatever it might be) and nothing more. He cannot, by his own subsequent act, alter the legal character, or enlarge in his own favour the legal or equitable operation, of the instrument."

A person, however, who advances to the mortgagee a larger sum than the latter has advanced to the mortgagor, without any circumstances occurring to suggest a title other than that of the mortgagee, will be entitled to hold the securities deposited, as against the mortgagor, until the full amount of the later loan has been paid.¹

To the extent of the advance to the original mortgagor there is apparently an implied authority to the mortgagee to fill in the transfer so as to complete his own title as mortgagee of the shares, or to delegate his right to do so to a subsequent mortgagee.²

American
decisions.

In *McNeil v. Tenth National Bank*³ and *Moore v. Metropolitan Bank*⁴ the courts of the United States appear to have come to a decision entirely opposed to that of the

¹ *Bentinel v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140.

² *France v. Clark* (1883), 22 Ch. D. 830; 52 L.J. Ch. 362; 48 L.T. 185; 31 W.R. 374. See also Buckley's Companies Acts (7th edit.), p. 489.

³ (1871), 46 New York Rep. 325.

⁴ (1873), 55 New York Rep., 41.

House of Lords in *France v. Clark* on a very similar state of facts. In the first of these cases, at any rate, the bank had notice of another title besides that of the brokers who pledged the shares, since the plaintiff had given to his brokers, together with the share certificate, an assignment in blank with a power of attorney endorsed thereon, and the bank gave instructions as to filling up the blanks. But the Court held, nevertheless, that as the principal had conferred upon his brokers an apparent title to and power of disposition over his shares, he was stopped from asserting his title as against persons who had taken in good faith from the brokers.¹

A question may arise in case of a deposit of foreign share certificates whether the rights of the parties are to be decided by English law, or by the law of the country in which the undertaking is situate. The question arose in the *Colonial Bank v. Cady*² on a deposit of American share certificates. The plaintiffs in the original action were the executors of the registered owner of 1210 shares in the New York Central and Hudson River Railway Company. The shares were transferable in person, or by attorney on the books of the company, only on the surrender and cancellation of the certificate by indorsement. The indorsement was in the form of a transfer for value, blank in the names of the transferor and transferee, with a power of attorney in blank to carry out the transfer. On the death of the owner the executors, in order to obtain registration in their own names, signed the transfers on the back of each certificate as executors, but without filling up the blanks, and sent the certificates to their broker, who fraudulently deposited them with a bank as security for advances to himself. The bank received the certificates *bonâ fide* and without further notice than the form of the certificates afforded, but took no steps to obtain registration. Neither on the New York nor on

Law
applicable
where
foreign
share
certificates
deposited.

¹ See, however, the opinions expressed by the judges in the House of Lords in the *Colonial Bank v. Cady*, *infra*, as to the state of the American law on this subject.

² (1890), 15 App Cas. 267; 63 L.T. 27; 39 W.R. 17.

the London Stock Exchange are transfers thus signed by executors treated as being in order or received as sufficient security for advances, unless duly authenticated. The executors brought an action to establish their title to the certificates, and it was argued on behalf of the bank that the case should be tried by American law, and that according to that law, as laid down in *M'Neil v. Tenth National Bank*¹ and *Kortright v. Buffalo Commercial Bank*,² the banks were entitled to retain the shares until their advances to the broker were repaid. But it was held that since all the dealings with the certificates had taken place in England among persons domiciled here, the respective rights of the executors and the bank must be determined by English law; and that the conduct of the executors in delivering the transfers was consistent with an intention either to sell or pledge the shares or to have themselves registered as the owners, and therefore did not estop them from setting up their title as against the bank, since the bank ought to have inquired into the broker's authority.

Forged
transfers.

A transfer which has been forged is merely a nullity, and does not in any way affect the title of the person whose name has been forged.³ And if, on the strength of such a forged transfer, a company has removed the name of one of their shareholders from the register, they will be compelled to make good the loss which he has incurred thereby.⁴

¹ (1871), 46 New York Rep. 325.

² (1838), 20 Wend. New York Rep. 91; affirmed, 22 Wend. New York Rep. 348.

³ As to the effect of a transfer obtained by fraud, see *Donaldson v. Gillo* (1866), L.R. 3 Eq. 274; 15 L.T. 382; 15 W.R. 166.

⁴ *Sloman v. Bank of England* (1845), 14 Sim. 475; 14 L.J. Ch. 226; *Midland Railway Co. v. Taylor* (1862), 8 H.L.C. 751; *Barton v. North Staffordshire Railway Co.* (1888), 38 Ch. D. 458; 57 L.J. Ch. 800; 58 L.T. 549; 36 W.R. 754; *Barton v. London & North Western Railway Co.* (1889), 24 Q.B.D. 77; 59 L.J. Q.B. 33; 62 L.T. 164; 38 W.R. 197. As to the liability to the Banks of England and Ireland for the transfer by means of forged transfers and powers of attorney of stocks which are transferable in their books, see *Sloman v. Bank of England*, *supra*; *Coles v. Bank of England* (1839), 10 A. & E. 437; 9 L.J. Q.B. 36; *Bank of Ireland v. Evans's Trustees* (1855), 5 H.L.C. 389.

But the registration of the forged transfer will not render the company liable to the person whose name has been wrongly registered unless he has acted in the belief that the transfer and registration were valid.¹

The Forged Transfer Acts, 1891 and 1892,² now empower local authorities and public companies to compensate, by a cash payment, persons who have suffered loss from a transfer of shares, stock, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney. A fund may be formed for this purpose by insurance, reservation of capital, accumulation of income, or otherwise, and on payment of the compensation the rights and remedies, which the party injured would have had against the party liable for the loss, pass to the authority or company which has paid the compensation.

Forged
Transfer
Acts.

Every transfer of stock or shares must be duly stamped before it can be registered.³

A transfer of shares in mines conducted on the cost-book system did not require a stamp under the Stamp Act of George III.,⁴ but now a request or authority to the purser of such a mine to register a transfer of shares, or a notice of any transfer, must bear a sixpenny stamp.⁵ The duty may be denoted by an adhesive stamp which is to be cancelled by the person by whom the request, authority, or notice is written and executed. Any one who writes or executes such a document without stamping it, or a purser or other officer of the mine who gives effect to it while unstamped, is liable to a fine of twenty pounds.⁶

Cost-book
mines.

¹ *Simm v. Anglo-American Telegraph Co.* (1879), 5 Q.B.D. 188; 49 L.J. Q.B. 392; 42 L.T. 37; 28 W.R. 290.

² 54 & 55 Vict. c. 43; 55 & 56 Vict. c. 36.

³ If the transfer is executed in this country, the fact that the undertaking is situated abroad does not relieve it of the necessity of stamping: *Wright v. Commissioners of Inland Revenue* (1855), 25 L.J. Ex. 49.

⁴ 55 Geo. III. c. 184, Sched., Part I.; *Toll v. Lee* (1849), 4 Ex. 230; 18 L.J. Ex. 364.

⁵ 54 & 55 Vict. c. 39, Sched. *Transfer*.

⁶ 54 & 55 Vict. c. 39, s. 110.

Transfer
of bank
stock, etc.

Under the Stamp Act, 1891, transfers of stock and shares are chargeable with duty as follows :¹

A conveyance or transfer, whether on sale or otherwise—

	s.	d.
(1) Of any stock of the Bank of England	7	9
(2) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1887, applies. For every £100, or for any fractional part of £100, of the nominal amount of stock transferred	2	6

Ad valorem
duty on
transfers.

Subject to the above, transfers of stock and shares are chargeable with *ad valorem* duty at the following rates :—

	£	£	s.	d.
If the value of the consideration is less than	5	...	0	0 6
Exceeds £5 and does not exceed	10	...	0	1 0
10 " "	15	...	0	1 6
15 " "	20	...	0	2 0
20 " "	25	...	0	2 6
25 " "	50	...	0	5 0
50 " "	75	...	0	7 6
75 " "	100	...	0	10 0
100 " "	125	...	0	12 6
125 " "	150	...	0	15 0
150 " "	175	...	0	17 6
175 " "	200	...	1	0 0
200 " "	225	...	1	2 6
225 " "	250	...	1	5 0
250 " "	275	...	1	7 6
275 " "	300	...	1	10 0

with an additional five shillings for every £50, or fraction of £50.

If the purchaser re-sells before he has obtained a conveyance, the duty is charged only upon the consideration moving from the sub-purchaser, whether it be higher or lower than that payable by the original purchaser.²

Foreign
or colonial
share
certificates.

The Act contains the following provision as to the duty payable on the transfer or delivery of bonds or other

¹ 54 & 55 Vict. c. 39, Sched. I., *Conveyance or Transfer*.

² *Ibid.*, s. 58 (4), (5). See also s. 59.

securities to bearer, and of foreign or colonial share certificates :¹ —

On the occasion of the first transfer thereof by delivery in the United Kingdom, and on the occasion of the first transfer thereof by delivery in the United Kingdom in any year after the year in which such first transfer by delivery shall happen—

						s.	d.
Where the amount secured does not exceed £25	...	...	...	...	...	0	3
Exceeds £25, but does not exceed £50	...	...	...	...	...	0	6
Exceeds £50, for every £50 and any fractional part of £50	...	...	...	...	...	0	6 ²
of such amount	...	...	...	...	...	0	6 ²

The duty is to be denoted by an adhesive stamp, and any one who is concerned in delivering or transferring such an instrument which is not duly stamped renders himself liable to a fine of twenty pounds.³

Section 33 of the Companies Act Amendment Act, 1867,⁴ provides that “there shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.”

Before registering a transfer which is alleged to have been made by a shareholder, a company generally takes the precaution of sending to the shareholder a notice of the fact that the transfer has been lodged with them, and stating that if they do not hear from him within a specified time the transfer

Registra-
tion.

¹ “Foreign or colonial share certificates” include any document which is *primâ facie* evidence of the title of any person as proprietor of, or as having a beneficial interest in, any share or shares, stock or debenture stock, or funded debt of any foreign or colonial company or corporation, where such person is not registered in respect thereof in a register duly kept in the United Kingdom: 54 & 55 Vict. c. 39, s. 82 (2).

² 54 & 55 Vict. c. 39, Sched. I., *Marketable Security*.

³ *Ibid.*, s. 85. See also ss. 82-84.

⁴ 30 & 31 Vict. c. 131.

will be registered. But it appears that this precaution will not always protect the company if the transfer is not in order.¹

Power of
directors
to refuse
registra-
tion.

To what extent shares in a company are transferable at the will of a shareholder depends upon the constitution of the company. As a general rule, unless the regulations of the company, or the act or charter of incorporation, otherwise authorize them, the directors of a company are bound to give their consent to a transfer, although they may believe it not to be for the benefit of the company, and though the transfer may be made with a view to escape from liability.² But in such a case the transfer must be a *bonâ fide*, in the sense of being an out-and-out transfer.³ The directors are in the position of trustees, and if a power accepting or refusing transfers is confided to them, they will not be permitted to exercise it in a capricious or arbitrary manner.⁴ But in the absence of evidence to the contrary, it will be presumed that they have acted reasonably and in good faith.⁵ And provided that they have considered the question and are acting *bonâ fide*, directors will not be compelled to give reasons for their refusal to register a transfer either where their power of refusal is absolute, or where it is limited to particular grounds.⁶ In any case, they are entitled to take a reasonable time to consider a transfer.⁷

¹ *Barton v. London & North Western Railway Co.* (1889), 24 Q.B.D. 77; 59 L.J. Q.B. 33; 62 L.T. 164; 38 W.R. 197.

² *Weston's Case* (1868), L.R. 4 Ch. 20; 38 L.J. Ch. 49; 19 L.T. 337; 17 W.R. 62. But transfers of shares in cost-book mining companies under such circumstances are fraudulent and void: see 32 & 33 Vict. c. 19, s. 35.

³ *Weston's Case*, *supra*.

⁴ *Poole v. Middleton* (1861), 29 Beav. 646; *ex parte Penney* (1872), L.R. 8 Ch. 446; 42 L.J. Ch. 183; 28 L.T. 150; 21 W.R. 186.

⁵ *Nelson Mitchell v. Liquidators of City of Glasgow Bank* (1879), 4 App. Cas. 624; 27 W.R. 875.

⁶ *In re Coalport China Co.* [1895], 2 Ch. 404; 64 L.J. Ch. 710; 73 L.T. 46; 44 W.R. 38.

⁷ *In re Ottos Kopye Diamond Mines* [1893], 1 Ch. 618; 62 L.J. Ch. 166; 68 L.T. 138; 41 W.R. 258.

The regulations of most companies provide that before a transfer can take place outstanding calls must be paid. But the transfer cannot be refused on this ground, unless at the time of its presentation the call has actually been made,¹ and the shareholder has already received notice that it has been made.² If a shareholder in a company has shares, on some of which the calls have been duly paid, while on others they are outstanding, he is entitled to transfer those on which the calls have been paid, unless the regulations of the company, or the Act under which the company is incorporated, distinctly provide against a transfer in such cases.³

Upon acceptance and registration of the transfer, it is the practice of companies to issue to the new shareholder a certificate acknowledging his title to the stock or shares therein mentioned. The certificate is a solemn affirmation under the company's seal that a certain amount of stock or a certain number of shares is or are standing in the name of the person mentioned in the certificate. The directors will generally require production of the certificate before registering a transfer in the name of a purchaser; but this is a matter which is in their discretion, and they may dispense with the production if they see fit to do so.⁴ Certifi-
cates.

The giving of a certificate amounts to a statement by the company, upon which it is intended that those who purchase the company's stock and shares in the market shall act, that the person to whom the certificate is issued is entitled to the stock or shares in question. It is not a warranty of title upon which a purchaser from the holder can maintain an

¹ *Reg. v. Inns of Court Hotel Co.* (1863), 32 L.J. Q.B. 369; 8 L.T. 551; 11 W.R. 806.

² *Hubbersty v. Manchester, Sheffield, & Lincolnshire Railway Co.* (1867), L.R. 2 Q.B. 471; 36 L.J. Q.B. 198; 16 L.T. 425; 15 W.R. 793.

³ Such a provision is made by the Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16, s. 16), and by the Companies Act, 1862 (25 & 26 Vict. c. 89, Table A).

⁴ *Shropshire Union Railways and Canal Co. v. Reg.* (1875), L.R. 7 H.L. 496; 45 L.J. Q.B. 31; 32 L.T. 283; 23 W.R. 709.

action at common law against the company, but it estops the company from disputing such purchaser's right to be registered.¹ The company is therefore liable to persons who have suffered loss through buying shares or advancing money on the faith of the certificates, even if the company has been induced to issue the certificate by means of a forged transfer,² or if the directors' signature to the certificate has been forged by the secretary,³ provided that such persons have acted in reliance upon the validity of the certificate.⁴

If the company issues a certificate of shares as fully paid, they are estopped from subsequently denying that such shares were not fully paid,⁵ unless the person who receives the certificate has such a knowledge of the facts as would lead any one who considered them to the conclusion that the liability in respect of the shares had not been fully satisfied.⁶

¹ *In re Ottos Koppe Diamond Mines* [1893], 1 Ch. 618; 62 L.J. Ch. 166; 68 L.T. 138; 41 W.R. 258.

² *In re Bahia and San Francisco Railway Co.* (1868), L.R. 3 Q.B. 584; 37 L.J. Q.B. 176; 18 L.T. 467; 16 W.R. 862; *Hart v. Frontino, etc., Gold Mining Co.* (1870), L.R. 5 Ex. 111; 39 L.J. Ex. 93; 22 L.T. 30; *Balkis Consolidated Co. v. Tomkinson* [1893], A.C. 396; 63 L.J. Q.B. 134; 69 L.T. 598; 42 W.R. 204; *In re Ottos Koppe Diamond Mines* [1893], 1 Ch. 618; 62 L.J. Ch. 166; 68 L.T. 138; 41 W.R. 258. As to the liability of a company on a transfer which has been certificated, see *Bishop v. Balkis Consolidated Co.* (1890), 25 Q.B.D. 512; 59 L.J. Q.B. 565; 39 W.R. 99. But see this case discussed in *McKay's Case*, *infra*.

³ *Shaw v. Port Philip, etc., Gold Mining Co.* (1884), 13 Q.B.D. 103; 53 L.J. Q.B. 369; 50 L.T. 685; 32 W.R. 771.

⁴ *Simm v. Anglo-American Telegraph Co.* (1879), 5 Q.B.D. 188; 49 L.J. Q.B. 392; 42 L.T. 37; 28 W.R. 290.

⁵ *Burkinshaw v. Nicholls* (1878), 3 App. Cas. 1004; 48 L.J. Ch. 179; 39 L.T. 308; 26 W.R. 819; *Parbury's Case* [1896], 1 Ch. 100; 65 L.J. Ch. 104; 73 L.T. 506; 44 W.R. 107; *McKay's Case* [1896], 2 Ch. 757; 65 L.J. Ch. 505; 75 L.T. 298. In some cases a statement accompanying the certificate to the effect that the shares are fully paid will create an estoppel against the company, although the certificates themselves contain no such statement: *In re Macdonald & Co.* [1893], 1 Ch. 89; 63 L.J. Q.B. 193; 69 L.T. 567.

⁶ *Ex parte Bloomenthal* [1896], 2 Ch. 525; 65 L.J. Ch. 748; 74 L.T. 670; 44 W.R. 577. These principles are applicable to an allottee of shares as well as to a transferee; see *Parbury's Case*, *supra*; approved *Ex parte Bloomenthal*, *supra*.

On the Stock Exchange the certificate is required to accompany the transfer in order to constitute a valid delivery.¹ But unless the certificate happens to be for the exact amount of the stock or shares sold to the particular purchaser, it is lodged with the secretary of the company; or, in the case of *stocks* appearing in the official list, with the secretary of the Share and Loan Department of the Stock Exchange, who thereupon "certifies" the transfer—that is to say, makes a note on it that the certificate has been lodged with him—and the transfer alone then constitutes an effectual delivery.

¹ See Rule 102.

CHAPTER XII.

MORTGAGES OF STOCK AND SHARES.

A MORTGAGE of stock or shares may be either legal or equitable. If, in the case of securities, the legal title to which depends upon registration, there is a mere deposit of the documents of title with the mortgagee, the transaction amounts to an equitable mortgage only. But if everything has been done which is necessary to constitute the mortgagee the apparent owner of the securities, whatever collateral arrangement there may be between the parties, the result is a legal mortgage. The mortgagee is, of course, more effectively protected by a legal than by an equitable mortgage.

Loans on
the Stock
Exchange.

On the Stock Exchange, deposits of stock and share certificates, bonds, etc., as security for loans of money, are of daily occurrence. Among members, these transactions are very informally conducted. No receipt or written undertaking for the return of the securities is given, but the member who makes the loan merely hands his cheque to the borrower for the full market value of the securities at the time of the transaction.¹ The duration of the loan is from settlement to settlement, the money being paid back or the loan renewed on each succeeding settling-day. If the loan is renewed, the amount lent is increased by the lender,

¹ If a nominal consideration stamp of ten shillings, registration fee, and mortgage stamp are required in the case of loans upon the Stock Exchange, the cost is borne by the borrower; Rule 100.

or is partially repaid by the borrower, according as the security has risen or fallen in value during the account.¹

On the day on which the loan is repayable, it is the custom of the lender to return the securities deposited to the borrower, the latter subsequently sending a cheque for the amount due, or returning the securities, or sending others of equal value. By permitting the securities to leave his custody, the holder does not surrender his rights over them, but a fiduciary relation is established by which the borrower becomes a trustee of the securities for the lender.²

It is sometimes difficult to distinguish a loan from a series of contracts of purchase and sale, known on the Stock Exchange as a "continuation." It was, in fact, for a long time considered that a continuation actually was a loan of money on a deposit of securities, and even now the two transactions are apt to be confused. But it was pointed out in *Bongiovanni v. Société Générale*,³ that the transaction is, in form and in law, a purchase and re-sale, or sale and re-purchase, as the case may be, "although in a business point of view so like a loan by the first buyer to the first seller as to be easily mistaken for a loan." Loans and
continua-
tions.

The distinction between a continuation and a loan is that, in the former case the receiver of the securities obtains *dominium*, and consequently enjoys an absolute power of disposition, while the receiver of securities, in return for a loan of money, obtains a very limited right of disposal. The result is apparent when the securities are mortgaged or sub-mortgaged, as the case may be. If the taker-in of securities upon a continuation mortgages them, as they are his absolute property, his mortgagee is entitled to hold them against all the world until the full amount of his debt is paid.⁴ But if a mortgagee of securities sub-mortgages them,

¹ See the evidence given in *Ex parte Marnham, re Morgan* (1860), 2 De G. F. & J. 634; 30 L.J. Bk. 1; 3 L.T. 516; 9 W.R. 131.

² *Burra v. Ricardo* (1885), 1 C. & E. 478.

³ (1886), 54 L.T. 320.

⁴ *Bentinck v. London Joint Stock Bank* [1893], 2 Ch. 120; 62 L.J. Ch. 358; 68 L.T. 315; 42 W.R. 140.

the sub-mortgagee obtains only such title as the mortgagee had,¹ unless through some act or default on the part of the mortgagor, the mortgagee has been enabled to obtain the legal title.²

Deposit
of Govern-
ment
securities.

On the Stock Exchange, when the securities deposited consist of English, India, corporation, or Colonial Government inscribed stocks, the rules provide, in the first place, that if the striking of balances for dividend takes place before repayment of the loan, the lender shall allow the dividend, deducting interest thereon till the day of payment of, and at the same rate of interest as the loan;³ and secondly, that if such stocks are borrowed without any stipulation as to their return, the borrower or lender may be called upon to deliver or take them, as the case may be, on the following day, whether a regular transfer-day or not.⁴

Realiza-
tion of
securities
on the
Stock
Exchange.

The rules of the Stock Exchange do not, in the first instance, permit members who hold securities as cover for loans, to place such securities beyond their immediate control, and after reasonable notice and upon repayment of the sum borrowed, with interest down to the time for which the loan was originally made, lenders may be required to return the identical securities deposited with them, and not merely securities of the same denomination and amount.⁵ If, however, the borrower is declared a defaulter, members who have made advances to him upon securities which are

¹ *France v. Clark* (1834), 26 Ch. D. 257; 53 L.J. Ch. 585; 50 L.T. 1; 32 W.R. 466.

² For instance, where the securities are bearer bonds, etc., or, if inscribed stocks and shares, are accompanied by a transfer executed in blank by the mortgagor, so that the mortgagee is able to fill up the transfer and obtain registration in his own name.

³ Rule 86. See *Vaughan v. Wood* (1833), 1 Myl. & K. 403, to the same effect. The same rule would, no doubt, in the absence of special agreement, hold good as to all securities, and whether the mortgage were made on or off the Stock Exchange.

⁴ Rule 85.

⁵ Rule 70. See, to the same effect, *Langton v. Waite* (1868), L.R. 6 Eq. 165; 37 L.J. Ch. 345; 18 L.T. 80; 16 W.R. 508. As to the measure of damages where the securities are not duly returned, see pp. 211-213, *ante*.

valued at less than the market price, are bound to realize their securities within three clear days (unless the creditors consent to a longer delay), or to take them at a price to be fixed by the official assignees, but with an appeal to any two members of the Committee; and should the security be insufficient, the difference may be proved against the defaulter's estate.¹ An unsecured loan is not admitted as a claim on the difference due to a defaulter's estate. And no such loan, when of longer duration than two business days, is admitted as a claim on any other of his assets. Should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day, he will be compelled to refund the amount so received for the benefit of the defaulter's estate.²

If the mortgage is made outside the Stock Exchange, the mortgagor is also entitled to the return of the particular securities deposited after repayment of the sum borrowed with interest, and after giving such notice as may have been agreed upon, or, in the absence of any stipulation as to notice, after a reasonable notice. In the absence of special agreement, the mortgagee is not entitled to sell the securities until default has been made in keeping up the stipulated margin, if any, or in repaying the money at the stipulated time, or, if a time has not been fixed for repayment, until after a demand for repayment has been made and refused.³ On the occurrence of any of these events, the mortgagee is entitled to an order for sale; but he is not entitled to a foreclosure order, though if the market value of the securities at the time is less than the amount for which they were mortgaged, the Court will sometimes give leave to the mortgagee to bid at the auction.⁴ If the mortgaged

General law as to mortgages of stocks and shares.

Mortgagee's right of sale.

¹ Rule 158.

² Rule 159.

³ *France v. Clark* (1883), 22 Ch. D. 830; 52 L.J. Ch. 362; 48 L.T. 185; 31 W.R. 374.

⁴ *Carter v. Wake* (1877), 4 Ch. D. 605; 46 L.J. Ch. 841.

securities are sold wrongfully, the mortgagee is accountable to the mortgagor for any profit that may have been realized by such sale.¹

Right
to sub-
pledge.

While a mortgagee is undoubtedly entitled to sell the securities upon the mortgagor's failure to repay the loan at the proper time, it appears to be still open to question to what extent he is entitled to dispose of his interest in the securities before the mortgagor has made default. If the loan is to be extended over a considerable period, the mortgagee may himself require an advance before repayment is due. How far, in such a case, will he be justified in sub-mortgaging the securities which have been deposited with him?

It was at one time considered that the mere fact of a sub-mortgage would put an end to the mortgagee's interest and right of retainer under the contract, and would entitle the mortgagor to maintain an action of detinue for the securities without tendering the amount of the loan. But it was decided by a majority of the Court in the case of *Donald v. Suckling*,² that the mortgagor could not recover his securities without tendering the amount which had been advanced to him, even though the securities had been sub-mortgaged for a larger sum than the amount of the original loan. Chief Justice Cockburn, however, hesitated to say that a transfer of the mortgage was justifiable, and considered that the mortgagor would be entitled to recover as damages whatever loss he could show that he had sustained by reason of the transfer.³ For in so far as, by disposing of the reversionary interest of the mortgagor, the mortgagee causes the mortgagor any difficulty in obtaining possession of the securities on

¹ *Langton v. Waite* (1868), L.R. 6 Eq. 165; 37 L.J. Ch. 345; 18 L.T. 80; 16 W.R. 508.

² (1866), L.R. 1 Q.B. 585; 35 L.J. Q.B. 232; 14 L.T. 772; 15 W.R. 13. See too *Halliday v. Holgate* (1868), L.R. 3 Ex. 299; 37 L.J. Ex. 174; 18 L.T. 656; 17 W.R. 13.

³ The same is the case when the securities have been sold before the proper time: *Johnson v. Stear* (1863), 15 C.B. N.S. 330; 33 L.J. C.P. 130; 9 L.T. 538; 12 W.R. 347.

payment of the sum due, and thereby causes him any real injury, he commits a legal wrong against him.¹ However, the mortgagee's right to transfer his mortgage, subject to the rights of the mortgagor, appears now to be generally recognized.²

As has already been pointed out,³ a mortgage of securities may be either legal or equitable. If the securities mortgaged are securities to bearer, the mortgagee, on receipt of the bonds, share warrants, or other documents of title, obtains all the outward appearances of ownership and is as effectively protected as it is possible for him to be. If, on the other hand, the securities are inscribed stocks and shares, the proper course for the mortgagee to pursue will depend upon whether they are or are not fully paid up.

If the securities consist of stocks, fully paid shares, etc., the legal ownership of which does not involve liability, it will generally be to the interest of the mortgagee, if the loan is to extend over any considerable period, to take a properly executed transfer and to have his name duly registered as owner, as he is then entitled to receive the dividends and the mortgagor is prevented from further dealing with the securities.⁴ This course has the additional advantage that if there still exist securities which are not things in action within the meaning of the order and disposition clause of the

Form of mortgage.

(i.) Where securities are fully paid up.

¹ See the judgment of Willes, J., in *Halliday v. Holgate*, *supra*.

² See *ex parte Sargent* (1874), L.R. 17 Eq., at p. 279. See also the opinion of Sir John Romilly, M.R., in *Mocatta v. Bell* (1858), 24 Beav. 585; 27 L.J. Ch. 237, that if a principal deposits securities with a broker in return for a loan of money he impliedly authorizes the broker to sub-mortgage them.

³ See p. 236, *ante*.

⁴ Where such a transfer is taken an *ad valorem* duty is payable (as to the amount see p. 230, *ante*), and therefore, where the loan is of very short duration, it may not be worth while to incur the expense involved in the course advised. Banks apparently overcome the difficulty by stating a nominal consideration in the transfer, but the legal effect of such a statement seems to be open to question (see note 2, p. 243, *post*). For a form of instrument qualifying a duly stamped transfer of stock or shares under sec. 23 (2) of the Stamp Act, 1891, see p. 295, *post*.

Bankruptcy Acts,¹ the transfer would clearly take them out of the apparent disposition of the mortgagor, and therefore prevent them from falling into the hands of his trustee in case of his bankruptcy. If the mortgagee obtains a transfer and registration he becomes the legal owner of the securities and, whatever private arrangement he may make with the mortgagor as to redemption, obtains the apparent right to dispose of them. Presumably if, under these circumstances, the mortgagee wrongfully sells to a *bonâ fide* purchaser for value, who has no notice of the trust in favour of the mortgagor, such purchaser will, upon obtaining a transfer and registration, be entitled to hold against the mortgagor, whose only remedy will be to proceed against the mortgagee for damages.

(ii.) Where shares are not fully paid up.

If the mortgaged securities are liable to further calls, the mortgagee will, in the event of his name being placed upon the register, be liable to pay such calls as are made while he is registered owner, or within a year of his name being removed from the register if the company is wound up and his transferee is unable to pay.² In such a case, therefore, it will generally be advisable for the mortgagee to accept an equitable mortgage of the shares only, when he will not be liable to pay calls made in respect of them,³ though he may find that he is unable to dispose of the shares while the calls

¹ In *Ex parte Union Bank of Manchester* (1871), L.R. 12 Eq. 354; 40 L.J. Bk. 57; 24 L.T. 951; 19 W.R. 872, it was held that the shares in question in that case were not things in action within the meaning of sec. 15 subs. 5 of the Bankruptcy Act, 1869. But in the *Colonial Bank v. Whinney* (1886), 11 App. Cas. 426; 56 L.J. Ch. 43; 55 L.T. 362; 34 W.R. 705, the House of Lords held that shares transferable by deed of transfer were things in action within the corresponding section (sec. 44) of the Bankruptcy Act, 1883, and the reasoning on which the decision was based appears to be sufficiently wide to cover shares of every description. Debentures of a joint stock company were held to be choses in action within the meaning of the Bankruptcy Act, 1869, in the case of *In re Pryce* (1877), 4 Ch. D. 685; 36 L.T. 117; 25 W.R. 432.

² *In re Land Credit Company of Ireland* (1873), L.R. 8 Ch. 831; 42 L.J. Ch. 435; 28 L.T. 653; 21 W.R. 612.

³ *Newry, etc., Railway Co. v. Moss* (1851), 14 Beav. 64; 20 L.J. Ch. 633.

are outstanding.¹ The mortgagee in this case will take a transfer in blank signed by the mortgagor, and he will then, it seems, be justified in completing his security at any time by filling up the transfer and obtaining registration.² If, however, before filling up the transfer the mortgagee becomes entitled to sell, and does in fact sell, the mortgagor will hold as trustee for the purchaser as, prior to the sale, he did for the mortgagee.

If the mortgagee fills up the transfer and obtains registration, and the mortgage is subsequently paid off by the mortgagor, the mortgagee holds as trustee for the mortgagor until the shares are re-transferred, and is entitled to an indemnity against all liabilities properly incurred by him in holding and maintaining them.³ So, too, if he sells and calls are made before the legal ownership is transferred, he is entitled to be indemnified by the purchaser for the payment of such calls.⁴

If an equitable mortgage is effected by a deposit of certificates only, the mortgagee should make sure that the mortgagor does not hold the securities in the capacity of

Equitable mortgage by deposit of certificates.

¹ See p. 233, *ante*.

² If the transfer must be by deed and a blank transfer is delivered in the first instance, it will either have to be re-delivered after execution or be accompanied by a power of attorney under seal authorizing the mortgagee to fill up the blanks: *Powell v. London and Provincial Bank* [1893], 2 Ch. 555; 62 L.J. Ch. 795; 69 L.T. 421; 41 W.R. 545.

By way of further security the mortgagee who receives a blank transfer may take a power of attorney to receive the dividends as they fall due. Such a power being given as part of the security for money, and therefore for valuable consideration, is irrevocable: see *Abbott v. Stratten* (1846), 3 J & L. 603.

When certificates are deposited with a bank to secure a loan, it is customary for the bank to take a transfer signed in blank by the mortgagor and stamped with a nominal consideration stamp of ten shillings. The bank subsequently fills in the transfer with a nominal consideration, and obtains registration in the name of officials of the bank. It seems that such a statement of the consideration does not invalidate the transfer even where a deed is necessary: *Powell v. London and Provincial Bank*, *supra*.

³ *Phené v. Gillan* (1845), 5 Hare, 1.

⁴ See p. 151, *ante*.

Effect of
notice of
prior title.

trustee, since in such a case the mortgagee will generally obtain no title as against the *cestui que trust*.¹ In all cases of equitable mortgage the question of notice is of the greatest importance. For if at the time of taking the mortgage the mortgagee had notice of a prior equitable title, or if he took the mortgage under circumstances which should have put him upon inquiry as to the true title of the mortgagor, his claims will be deferred to those of the holder of the earlier title even though he subsequently acquires the legal estate.² But if, before receiving notice of any prior title, the mortgagee gets in the legal estate, or if, perhaps, he has fulfilled all necessary conditions to give him, as between himself and the company, "a present, absolute, unconditional right to have the transfer registered before the company is informed of the existence of a better title," his title will be preferred to that of the holder whose claim was earlier in date.³ The notice must, however, be sufficiently direct to impose upon the mortgagee a duty to make inquiries,⁴ and the mere fact that the mortgagor is a broker is insufficient to give rise to such an obligation.⁵ But a transfer in blank signed by some party

¹ *Shropshire Union Railways and Canal Co. v. Reg.* (1875), L.R. 7 H.L. 496; 45 L.J. Q.B. 31; 32 L.T. 283; 23 W.R. 709; *Powell v. London and Provincial Bank* [1893], 1 Ch., at p. 615.

² *Nanney v. Morgan* (1887), 37 Ch. D. 346; 57 L.J. Ch. 311; 58 L.T. 238; 36 W.R. 677; *Sheffield v. London Joint Stock Bank* (1888), 13 App. Cas. 333; 57 L.J. Ch. 986; 58 L.T. 735; 37 W.R. 33; *Simmons v. London Joint Stock Bank* [1892], A.C. 201; 61 L.J. Ch. 723; 66 L.T. 625; 41 W.R. 108.

³ *Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20, 29; 55 L.J. Q.B. 169; 54 L.T. 389; 34 W.R. 662; *Roots v. Williamson* (1888), 38 Ch. D. 485; 57 L.J. Ch. 995; 58 L.T. 802; 36 W.R. 758; *Moore v. North Western Bank* [1891], 2 Ch. 599; 60 L.J. Ch. 627; 60 L.T. 456; 40 W.R. 93. See also p. 224, *ante*.

⁴ *Marshall v. National Provincial Bank* (1892), 61 L.J. Ch. 465; 66 L.T. 525; 40 W.R. 328.

⁵ *Baker v. Nottingham Banking Co.* (1891), 60 L.J. Q.B. 542; *Mulville v. Munster* (1891), 27 L.R. Ir. 379; *Hone v. Boyle* (1891), 27 L.R. Ir. 137. As to what constitutes notice of a trust, see *Kaemena v. Central Bank of London* (1888), 4 T.L.R. 657; *London and Canadian Loan and Agency Co.* [1893], A.C. 406; 63 L.J. P.C. 14.

other than the mortgagor is in itself notice to the mortgagee of a title in some one else than the mortgagor.¹

In the absence of any statutory provision on the point, a question might arise as to how far an equitable mortgagee could protect himself by giving notice of his title to the company. But sec. 30 of the Companies Act, 1862,² provides that no notice of any trust, expressed, implied, or constructive, shall be entered in the register, in the case of companies governed by the Act and registered in England or Ireland. The effect of this section was discussed at considerable length in *Société Générale de Paris v. Walker*, the Court of Appeal holding,³ and the House of Lords⁴ apparently agreeing though deciding the case on another ground, that priority of title was neither obtained nor lost by giving or not giving notice to the company. And though some of the judges in the House of Lords in the *Bradford Banking Co. v. Briggs*⁵ appear to have doubted the correctness of the decision on this point, it will be advisable to assume that such a notice has not any effect in strengthening the position of the possessor of a merely equitable title.⁶

If an instrument under hand only is given upon the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery, by way of security for a loan, such instrument is deemed to be an agreement and is charged with a duty of sixpence, which may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.⁷

¹ See p. 225, *ante*.

² 25 & 26 Vict. c. 89.

³ (1884), 14 Q.B.D. 424.

⁴ (1885), 11 App. Cas. 20; 55 L.J. Q.B. 169; 54 L.T. 389; 34 W.R. 662.

⁵ (1886), 12 App. Cas. 29; 56 L.J. Ch. 364; 56 L.T. 62; 35 W.R. 521.

⁶ The Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 9, contains a similar declaration as to notice in the case of loans raised and stocks issued by local authorities in accordance with its provisions.

⁷ Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 22, 23. For a common form of such a loan note, see App. B, p. 294. The Bank of England and many of the principal banks have forms of their own, which they supply to persons to whom they consent to make an advance.

So, too, an instrument under hand only which makes redeemable or qualifies a duly stamped transfer, intended as a security, of any registered stock or marketable security, is deemed to be an agreement and is charged with a duty of sixpence, which is to be denoted in a similar manner.¹

¹ Stamp Act, 1891, ss. 22, 23.

APPENDIX A.

1. ON the 20th day of March in every year, or if that day should be a Sunday or Bank Holiday, then on the following business day, a ballot by the members shall be held for the appointment of a committee of thirty members who shall be called the "Committee for General Purposes," and shall hold office for twelve months from the 25th of March next following the date of their election, but shall be re-eligible. Notice of such ballot shall be publicly exhibited in the Stock Exchange during fourteen days previous to the same being held, and a further notice containing the names of the persons on the existing committee willing to serve again, and of all new candidates, their proposers and seconders, shall be publicly exhibited in like manner during three business days previously to such ballot being held. The members on the said committee retiring shall remain in office until the 25th of the same month of March, in which their successors shall have been elected, and in case no election shall be made at any such ballot as aforesaid, the members retiring shall remain in office until the 25th day of March in the following year, or until a valid election shall have taken place under clause 92. Four business days' notice previous to any ballot of intention to propose any person not already on the committee and eligible for re-election must be given to the secretary of the committee in writing signed by two members, and the ballot shall be by printed lists containing the names of the persons willing to serve again and of all persons so proposed, distinguishing the former from the latter. In case no valid election be made on the day hereinbefore appointed for that object, the committee may forthwith or at any time thereafter, prior to the next ordinary yearly ballot, cause a ballot to be held for such election, on a day to be fixed by the committee for that purpose, and in all respects, as lastly hereinbefore provided; and the committee to be appointed by such ballot shall remain in office until the 25th day of March then next following. Every ballot for the election of the Committee for General Purposes or

for supplying vacancies in the committee shall be held at the Stock Exchange, and except as specially provided by these presents shall be conducted in accordance with the existing practice and usage in reference to such elections. In case of dispute as to what such practice and usage has been in any particular, the committee shall from time to time determine the same by resolution.—*Deed of Settlement*, sec. xii. cl. 90.

Qualifica-
tion of
members
of the com-
mittee and
of voters.

2. No person shall be elected to the said Committee for General Purposes who shall not for the space of five years immediately preceding the day of election have been a member, and every person on ceasing to be a member shall *ipso facto* vacate his seat on the committee.—*Deed of Settlement*, sec. xii. cl. 91.

Every member is entitled to vote although he may not have paid his subscription.

Occasional
vacancy in
committee.

3. Any occasional vacancy in the said Committee for General Purposes shall be filled up by a ballot of members to be held for the purpose on a day to be fixed by the Committee for General Purposes, and of which seven days' previous notice shall be given by the same being publicly exhibited in the Stock Exchange. Similar notice of nomination shall be given as provided by Clause 90. The surviving or continuing members on the committee, notwithstanding any vacancy in their number, may act until the same can be filled up.

Any person elected to supply an occasional vacancy in the said committee shall hold office for the residue of the year in which he shall be elected, and shall then retire with the other members of the said committee.—*Deed of Settlement*, sec. xii. cls. 92, 93.

Procedure
of the
committee.

4. The said Committee for General Purposes shall meet at such times as they may from time to time appoint, and shall determine their own quorum (the same to be not less than seven members actually present) and mode of procedure.

Quorum.

Until otherwise determined, the quorum of the said committee shall be seven members personally present.—*Deed of Settlement*, sec. xii. cls. 98, 99.

Committee
to regulate
business on
the Stock
Exchange,
and make
rules.

5. The said Committee for General Purposes shall regulate the transaction of business on the Stock Exchange, and may make rules and regulations not inconsistent with the provisions of these presents respecting the mode of conducting the ballot for the election of the committee and respecting the admission, expulsion, or suspension of members and their clerks, and the mode and conditions in and subject to which the business on the Stock Exchange shall be transacted, and the conduct of the persons transacting the same, and generally for the good order and government of the members of the

Stock Exchange, and may from time to time amend, alter, or repeal such rules and regulations, or any of them, and may make any new, amended, or additional rules and regulations for the purposes aforesaid.—*Deed of Settlement*, sec. xii. cl. 95.

6. At their first ordinary meeting after the annual election, the committee shall elect, from amongst themselves, a chairman and deputy-chairman, who shall respectively hold office till the 25th of March next ensuing. In case either appointment shall become vacant, it shall be filled up as soon afterwards as possible. When the chairman and deputy-chairman are absent, the meeting shall appoint a chairman. In all cases, when, on a division, the votes are equal, the chairman shall have a second or casting vote.

Election of chairman and deputy-chairman.

Chairman has casting vote.

7. At the first meeting of the committee, one of the members of the Stock Exchange shall be chosen secretary, who shall hold his office during their pleasure; and three other members shall be appointed to act as scrutineers at elections, who shall report the result of the ballot to the committee and to the Stock Exchange.

Election of secretary and scrutineers.

8. The ordinary meetings of the committee shall be held every Monday at one o'clock, commencing on the first Monday after each annual election. But a special meeting of the committee may at any time be called by the chairman or deputy-chairman, or (in their absence, or in case of their refusal) by any three members of the committee. One hour's notice, at least, shall be posted in the Stock Exchange.

Meetings. Special meetings.

9. If a quorum be not assembled within a quarter of an hour after the time appointed for meeting, the chairman or deputy-chairman may adjourn such meeting.

Absence of quorum.

10. The business of the committee shall be divided into two classes, viz.—

Business, routine, and special.

Routine.

Special.

The first, to comprehend the reading of minutes for the purpose of confirmation, or otherwise, the admission of members and clerks, fixing settling days, &c.

Minutes.

The second, the investigation of claims and other matters relating to the interests of the members, or of the public.

The printed notices of the meetings of the committee posted in the House shall contain the words on "routine" or "special" meeting business.

Notices of meeting.

11. No resolution of the committee shall be valid, or put in force, until confirmed, unless it relate to the shutting of the House, the admission of members, the re-admission of defaulters, the fixing of

Confirmation of resolution.

- ordinary settling days, or the granting or refusing of special settlements, and official quotations. In cases which do not admit of delay, two-thirds of the committee present must concur in favour of the immediate confirmation of the resolution, and the urgency of the case must be stated on the minutes. *If a resolution be not confirmed, and another resolution be substituted, the substituted resolution shall also require confirmation at a subsequent meeting.* In all cases brought under the consideration of the committee, their decision, when confirmed, is final, and shall be carried out forthwith by every member concerned.
- Urgent confirmation.** 12. Notice shall be given in writing of any alteration of, or addition to, the rules, and a copy of such alteration of a rule, or proposed new rule, shall be sent to each member of the committee.
- Decisions final.** After the reading of the minutes, the consideration of any alteration of a rule, or proposed new rule, shall take precedence of all other business, except the re-admission of defaulters and cases of urgency.
- Notice of new rules.** 13. All communications to the committee shall be made in writing; and no anonymous letter shall be acted upon.
- Precedence of business.** 14. Members and their clerks shall attend the committee when required; and shall give such information as may be in their possession relating to any matter under investigation.
- Attendance of members and clerks when required.** 15. The committee may expel any of their own members from the committee who may be guilty of improper conduct. The resolution for expulsion must be carried by a majority of two-thirds in a committee specially summoned for the purpose, and consisting of not less than twelve members, and must be confirmed by a majority of the committee, at a subsequent meeting, specially summoned.
- Expulsion of members of committee.** 16. **CLAUSE 1.**—*The committee may expel or suspend any member who may violate any of the rules or regulations.*
- Expulsion or suspension of members.** **CLAUSE 2.**—*The committee may expel or suspend any member who may fail to comply with any of the committee's decisions.*
- Expulsion or suspension of members.** **CLAUSE 3.**—*The committee may expel or suspend any member who may be guilty of dishonourable or disgraceful conduct.*
- Special committee.** *A resolution for expulsion or suspension must be carried by a majority of three-fourths of a committee present at a meeting specially summoned, and consisting of not less than twelve members, and must be confirmed by a majority of a committee present at a subsequent meeting specially summoned.*
- Improper or disorderly conduct.** 17. The committee may censure, or suspend for a period not exceeding two months, any member of the Stock Exchange who may

conduct himself in an improper or disorderly manner, or who may wilfully obstruct the business of the House. Any resolution adopted under this rule must be carried by a majority of three-fourths of the members present.

A resolution for expulsion or suspension must be carried by a majority of three-fourths of a committee present at a meeting specially summoned, and consisting of not less than twelve members, and must be confirmed by a majority of a committee present at a subsequent meeting specially summoned.

18. The Committee for General Purposes for the time being may, in their absolute discretion, and in such manner as they may think fit, notify or cause to be notified to the public that any member has been expelled, or has become a defaulter, or has been suspended, or has ceased to be a member, and the name of such member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly. Publication of names, etc.

NOTE.—The power given to the committee under this rule is clearly very extensive; but since every member, on admission, expressly binds himself to comply with the rules, he cannot subsequently complain that the rule is unreasonable, or maintain an action for libel in respect of anything published by the committee, even after he had ceased to be a member by expulsion or otherwise; see *Belton v. Hatch* (1888), 109 New York Rep. 593.

19. The committee may dispense with the strict enforcement of any of the regulations; but such power shall only be exercised by a committee specially convened for that purpose, and consisting of not less than twelve members, three-fourths of whom must concur in the resolution for such dispensation. The resolution must be confirmed by a majority of the committee, at a subsequent meeting, specially summoned. Suspension of rules and regulations.

ADMISSIONS, RE-ELECTIONS, AND RE-ADMISSIONS.

20. Every member desirous of being re-elected shall, on or before the 15th of February in each year, address to the secretary a letter, of the form inserted in the Appendix, p. 257, *infra*. Applications for re-election.

Each member of a partnership is required to sign a separate letter.

Admission
and re-
election.

21. The committee shall, on the first Monday in March, proceed to admit and re-elect such persons as they shall deem eligible to be members of the Stock Exchange, for one year, commencing on the 25th of March then instant, or last preceding the admission of such subscriber, at the amount fixed by the trustees and managers for such admission.

Sureties
for new
members.

22. Every applicant for admission, previously to being balloted for, must be recommended by three members of not less than four years' standing, who have fulfilled all their engagements, and who are not indemnified. Each recommender must engage to pay five hundred pounds to the creditors of the applicant, in case the latter shall be declared a defaulter within four years from the date of his admission.

When two
sureties
required.

Exception

When can-
didate pre-
viously
engaged in
business.

Limitation
as to recom-
mendation.

If the applicant has been a clerk in the Stock Exchange for four years previously to his application, two recommenders only shall be required, who must each enter into a similar engagement for three hundred pounds, but any clerk, who previously to his employment in the Stock Exchange shall have been engaged as principal in any business, shall only be eligible for admission as a member with three sureties for five hundred pounds each.

No member shall be surety for more than three new members at the same time.

NOTE.—As to the release of the sureties where a default is declared in consequence of a composition with creditors, see Rule 163.

Foreigners.

23. No foreigner shall be admissible, unless he shall have been naturalized for a period of two years, and shall have been a resident in this country for seven years.

NOTE.—The Naturalization Act of 1870 (33 Vict. c. 14), s. 7, provides as follows: An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom or to serve under the Crown, may apply to one of Her Majesty's principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce, in support of his application, such evidence of his residence or service as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may, in manner aforesaid, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

By sec. 8, a natural-born British subject who has ceased to be a British subject by virtue of the provisions of the Act, may be re-admitted to the status of a British subject on conforming to the terms and conditions as if he were an alien born.

The oath of allegiance is as follows: "I, _____ do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors according to law. So help me, God." See sec. 9.

24. A notice of each application, with the names of the recommenders, stating that they are not, and do not expect to be, indemnified, shall be posted in the Stock Exchange, at least eight days before the applicant can be balloted for. Notice of application.

25. Members are required to have such personal knowledge of applicants whom they recommend, and of their past and present circumstances, as shall satisfy the committee as to their eligibility. Personal knowledge of applicant by sureties.

26. Any recommender of a new member, who at the time of such member's admission shall have avowed that he was not, and that he did not expect to be indemnified, and who shall subsequently receive any indemnity, shall, in the event of the new member failing within Subsequent indemnification of sureties.

the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

Ineligibility of sureties.

27. An applicant may be recommended by a firm, but not by two members of the same firm, nor by a member who is an authorized or unauthorized clerk, nor by a member whose authorized clerk the applicant may be, nor by a member whose sureties are still liable.

New sureties when required.

28. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the committee will prohibit his entrance to the Stock Exchange.

Applicants engaged in other businesses.

29. No applicant is admissible, if he be engaged as principal or clerk in any business other than that of the Stock Exchange, or if his wife be engaged in business, or if he be a member of, or subscriber to, any other institution where dealings in stocks or shares are carried on; and if subsequently to his admission he shall render himself subject to either of those objections, he shall thereby cease to be a member.

Bankrupts.

30. No applicant for admission, who has been a bankrupt, or who has been proved to be insolvent, or who has compounded with his creditors, shall be eligible, unless he shall have paid 20s. in the pound, and obtained a full discharge.¹

No applicant, having once been a bankrupt, or insolvent, or compounded with his creditors, shall be eligible for admission.

Objections to be in writing.

31. A member, intending to object to the admission or re-admission of an applicant, or to the re-election of a member, is required to communicate the grounds of his objection to the committee by letter, previously to the ballot, or re-election.

Rejected applications. Special committee on defaulters when required.

32. If any applicant for admission, re-admission, or re-election, be rejected, he shall not be balloted for again before the 25th of March then next ensuing. Defaulters declared within four years of their admission as members, and defaulters who have been rejected upon two ballots can only be re-admitted by a majority of three-fourths in a committee specially summoned, and consisting of not less than twelve members.

Discontinuance of subscriptions.

33. Any former member, who, not having resigned, and not having been a defaulter, bankrupt, or insolvent, shall have discon-

¹ This rule does not apply to the re-admission of members of the Stock Exchange.

tinued his subscription for one year, must be recommended for re-election by two members, but without security. If he shall have discontinued his subscription for two years, he will be considered a new applicant, and must apply for admission in the usual way.

34. Any member wishing to resign his membership must forward to the secretary a letter tendering such resignation, and a copy of this letter shall be posted in the Stock Exchange for at least four weeks before the matter is entertained by the committee. Resignation of members.

35. A notice of every defaulter, bankrupt, or insolvent, applying for re-admission, shall, at the discretion of the committee, be posted (without recommenders) in the Stock Exchange at least twenty-one days, and the committee shall then take the application into consideration, upon the report of the sub-committee, appointed according to Rule 171. If, however, the committee think fit, a defaulter may be re-admitted without the above notice, upon a report of the sub-committee, and a certificate signed by such a number of the creditors as may be satisfactory to the committee, that all liabilities have been *bonâ fide* discharged in full. In all such cases, after the defaulter has been re-admitted by ballot, it shall be decided by show of hands, whether his name shall be posted in The Stock Exchange as having paid 20s. in the pound, or whether it shall be placed in one of the two classes mentioned in Rule 172. Re-admission of defaulters.

NOTE.—As to suspending the re-admission of defaulters, see Rules 163–166.

36. The re-admission of defaulters shall take precedence of all other business. Precedence of defaulters' re-admission.

37. The chairman of the committee, in addition to any other questions that may appear to be necessary, shall, to each of the recommenders of an applicant, put the following :— Questions put to sureties.

Has the applicant ever been a bankrupt, or has he ever compounded with his creditors? and if so, within what time, and what amount of dividend has been paid?

Would you take his cheque for three thousand pounds in the ordinary way of business?

Do you consider he may be safely dealt with in securities for the account?

38. The chairman shall require every new applicant to acknowledge his signature to the form of application, and shall ask such questions as may be deemed necessary. Questions put to new applicants.

APPENDIX TO ADMISSIONS AND RE-ELECTIONS.

Form of
application
for admis-
sion.

1. Form of letter to be signed by persons desirous of becoming members of the Stock Exchange.

To the Secretary of the Committee for General Purposes.

SIR,

You will please to acquaint the Committee for General Purposes that I am desirous of being admitted a member of the Stock Exchange for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. I have read the Rules and Regulations of the Stock Exchange.

I have read the resolution at the back of the letter.

I am a British subject, and of age.

I am (state whether married or unmarried).

My residence is

My office is

My bankers are

I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establishment unconnected with the Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in stock or shares are carried on.

I am, Sir, yours faithfully,

We recommend Mr. as a fit person to be admitted a member of the Stock Exchange; and in case he shall be publicly declared a defaulter within four years from the date of his admission, we each of us hereby engage to pay to his creditors, upon application, the sum of five hundred pounds^{1 2} to be applied in discharge of the said defaulter's debts, in the Stock Exchange.

The following rule is to be printed on the back of the letters of application :—

28. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a

¹ The sureties must state opposite to their signatures that they are not, and that they do not expect to be, indemnified for the security they give, and must attend, together with the person recommended, at one o'clock of the day on which the ballot is to take place; and they are required to have such personal knowledge of the applicant and of his past and present circumstances, as may enable them to give a satisfactory account of the same to the committee.

² Three hundred pounds when two sureties only are required.

member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the committee will prohibit his entrance to the Stock Exchange.

The secretary shall send to every member, on his admission, a letter to the following effect:—

SIR,

I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will be entitled to admission to the House upon payment of your entrance fee and subscription to the credit of the managers.

I am, Sir, etc.,

FRANCIS LEVIEN,

Sec. to the Committee for General Purposes.

2. Form of the letter to be signed by persons desirous of being re-elected members of the Stock Exchange.

Form of application for re-election.

APPLICATION FOR RE-ELECTION.

To the Secretary of the Committee for General Purposes.

SIR,

You will please to acquaint the Committee for General Purposes that I am desirous of being re-elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force.

My residence is

My office address is

My bankers are

I am engaged in partnership with

I carry on business as a ¹

I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establishment unconnected with the Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in stocks or shares are carried on. The under-named will continue to act as clerk.


A member who may part with a clerk, or be desirous of withdrawing from an authorized clerk the permission to transact business on his

¹ Members who desire their names to appear in the published "Lists of Brokers who are Members of the Stock Exchange," must here state whether they act as brokers.

account, shall give notice in writing to the secretary, who shall forthwith communicate the same to the Stock Exchange in the usual manner.

N.B.—Application for the admission of new clerks or the authorization of clerks hitherto unauthorized, must be made on special forms, to be obtained at the office of the secretary.

Name of Clerk.	Here state whether authorized or not to transact business, and if the party be a Member, it is to be so stated.

 It is requested that all the names be written at full length.

The subscription is to be paid to the credit of the managers, within twenty-one days from the 25th of March.

Rules to be given to applicants. 3. The secretary shall furnish each applicant with a book of the rules and regulations, which must be carefully read by him previous to his admission.

Letter to members re-elected. The secretary shall send to every member, on his re-election, a letter to the following effect:—

SIR,

I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to, the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will please to pay your subscription to the credit of the managers.

I am, Sir, etc.,

FRANCIS LEVIEN,

Sec. to the Committee for General Purposes.

PARTNERSHIPS.

Notice of partnerships. 39. In every year, as soon as possible after the general election, a list of partnerships shall be made out by the secretary. In case of a new, or alteration in an old partnership, the same shall be communicated to the committee; and no partnership shall be considered as altered or dissolved until such communication be made.

To be posted. All notices relative to partnerships must be signed by the parties, countersigned by the secretary, and posted in the Stock Exchange.

NOTE.—After a partnership has been formed, no member of the Stock Exchange is permitted to do a bargain with an individual member of the firm without the knowledge of the remaining partners, under pain of expulsion from the Stock Exchange (Rule 56).

40. The failure of a firm dissolves the partnership, and, should the members of such firm, when re-admitted, desire to renew the partnership, notice thereof must be given to the committee in the usual way.

Partnerships dissolved by failure.

41. No member of the Stock Exchange shall be allowed to enter into partnership with any person who is not a member; nor shall any member form a partnership during the liability of his recommenders, without their written consent, such consent to be communicated to the committee.

Partnership with non-members prohibited
Consent of sureties.

NOTE.—Where a non-member introduces business to a firm of brokers on the terms that he shall receive a fixed proportion of the profits of such business and bear a fixed proportion of the losses, the transaction does not amount to a partnership between the parties; see *Sutton v. Gray* [1894], 1 Q.B. 285; 63 L.J. Q.B. 633; 69 L.T. 673; 42 W.R. 195. See also p. 42, *ante*.

42. Members dealing generally together in any particular stock or shares, and participating in the result, shall be held responsible for the liabilities of each other, not only in the shares or stock in which they are jointly interested, but also in any other description of securities in which either of them may transact business, unless they forward a written notice to the secretary, specifying the particular shares or stock in which they deal on joint account.

Joint dealing.

No limited partnership shall consist of more than two members, or firms, nor shall such partnership be carried on in any other markets than those in which both parties are dealing.

This rule to be applicable also to members allowing others to deal with their shares, stock, or capital, and participating in the result.

Form of notice to be countersigned by the secretary and posted in the Stock Exchange.

Limited partnership.

(NOTICE.)

We, the undersigned, beg to inform the Committee for General Purposes that, from this day until further notice, we hold ourselves jointly responsible to the Stock Exchange for all transactions entered into by either of us in

Form of notice.

{ _____

We are, Sir, etc.

Brokers and dealers, and their clerks.

43. The committee will not allow members or their authorized clerks to act in the double capacity of brokers and dealers; nor will they sanction partnerships between brokers and dealers.

Partnership between brokers and dealers.

NOTE.—For the distinction between brokers and dealers, see pp. 36, 37, *ante*.

CLERKS.

- Admission.** 44. No clerk shall be admitted without the permission of the committee, nor unless he be seventeen years of age.
- Eligibility.** No person, who is not eligible for admission as a member, can be admitted as a clerk, with the exception of persons under age, who are ineligible as members on that account only.
- Defaulters.** Defaulters can be allowed as clerks only by a majority of three-fourths in a committee specially summoned, and consisting of not less than twelve members. Clerks so allowed are not thereby admissible as members.
- Authority to deal.** No clerk shall be authorized to transact business until he has been two years in the Stock Exchange, and is twenty years of age.
No member acting as clerk can be authorized to transact business until he has been two years on the Stock Exchange.
No authorized clerk shall transact business as a dealer in any securities other than those in which his employer deals.
- Application for admission.** 45. A member, desirous of obtaining the admission of a clerk, or of employing another member as his clerk, shall make application in writing to the committee, and state whether such clerk is to be authorized or not authorized to transact business.
- Previous occupation of applicants.** When application is made for the admission of a clerk who has previously been engaged in business out of the Stock Exchange, the name and address of such person, together with the name of the member applying for his admission, shall be posted in the Stock Exchange eight days prior to the application being considered by the committee.
- Notice of admission.** No clerk shall enter the Stock Exchange until his employer has received from the secretary notice of his admission.
- Consent of sureties of a new member to his employment of an authorized clerk.** 46. A member, applying for the admission of an authorized clerk, must first obtain the consent of his sureties in writing, if the term of their liability be not expired.
- Dismissal of a clerk, or withdrawal of authority to deal, etc.** 47. A member who may part with a clerk, or be desirous of withdrawing from an authorized clerk the permission to transact business on his account, shall give notice in writing to the secretary, who shall forthwith communicate the same to the Stock Exchange, in the usual manner.
- List of authorized clerks.** 48. A list of authorized clerks (distinguishing those who are also members) and the names of their employers, shall be posted in the Stock Exchange, and the authority shall be considered to continue until revoked by letter to the committee.
- Responsibility of** 49. A member authorizing a clerk to transact business shall not be

held answerable for money borrowed by the clerk, without security, unless he shall have given special authority for that purpose.

50. A member employed as clerk, whether authorized or unauthorized, shall not make any bargain in his own name.

51. No clerk shall be allowed to apply for an allotment in loans or shares without the sanction of his employer, who shall be responsible for the payment of the deposit on the shares or stock so applied for.

52. Clerks of defaulters are excluded from the Stock Exchange. Clerks of deceased members may, by permission of two members of the committee, attend to adjust unsettled accounts.

members
employing
authorized
clerks.

Members
authorized
clerks.

Applica-
tion for
allotments
by clerks.

Exclusion
of clerks of
defaulters
and
deceased
members.

GENERAL RULES APPLICABLE TO STOCK EXCHANGE TRANSACTIONS.

53. The Stock Exchange does not recognize in its dealings any other parties than its own members; every bargain therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the rules, regulations, and usages of the Stock Exchange.

Fulfilment
of bargains.

NOTE.—Although the rules profess to be binding only upon members, they, in fact, unless merely disciplinary, bind non-members also, when dealing upon the Stock Exchange; for every one who instructs his agent to enter into contracts for him in a special market, if he does not expressly limit the agent's authority, gives him an implied authority to contract according to the rules and usages governing that market, with the exception of usages which are unreasonable as against persons who are not aware of them, and of which the principal is not proved to have had actual notice. See, further, pp. 88, 89, *ante*.

54. No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the committee.

Legal pro-
ceedings by
members.

The committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and will deal with such cases as the circumstances may require.

Legal pro-
ceedings
against
members.

NOTE.—The first paragraph of this rule does not prevent the principal of a member from enforcing against another member, by means of legal proceedings, a claim arising out of Stock Exchange transactions. The principal is entitled to bring an action in his own right and in his own name, although the contract is made in the name of the agent: *Langton*

v. *Waite* (1868), L.R. 6 Eq. 165; 37 L.J. Ch. 345; 18 L.T. 80; 16 W.R. 508. But in the event of the principal taking such legal proceedings, by the second paragraph of the rule the committee reserve to themselves the power to do what is just, under the circumstances, between the members, as, for instance, by making the principal's broker refund to the jobber the money which the latter has been legally compelled to pay to the principal.

See *Robertson v. Heffer* (1893), 9 T.L.R. 622, as to granting an injunction to restrain an application to the committee of the Stock Exchange for the purpose of compelling a member to carry out his contracts.

Complaints
by non-
members
against
members.

55. If a non-member shall make any complaint against a member, the committee shall, in the first place, consider whether the complaint is fitting for their adjudication, and in the event of the committee deciding in the affirmative, the non-member shall, previously to the case being heard by the committee, sign a consent in writing as follows:—

To the Committee for General Purposes of the Stock Exchange, London;
In the matter of a complaint between

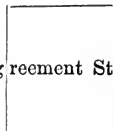
and

GENTLEMEN,

Form of
consent to
decision of
committee.

I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith to carry into effect your award, resolution, or decision in this matter, in the same manner as if I were a member of the Stock Exchange; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the committee may proceed *ex parte* after notice, and that it shall be no objection that the members of the committee present vary during the inquiry, or that any of them may not have heard the whole of the evidence, and any award or resolution of the committee, signed by the chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the committee. And I hereby agree that this letter shall be deemed to be a *submission to arbitration within the meaning of the Arbitration Act, 1889.*

Agreement Stamp.



56. If a member shall do a private bargain, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being concealed from the firm, both members shall be expelled.

Private dealing with individuals of a firm prohibited.

57. If any member or authorized clerk shall do a bargain, either for money or time, with an authorized or unauthorized clerk, for account of such clerk, they shall be liable to expulsion.

Bargains with or for clerks.

A resolution for expulsion or suspension must be carried by a majority of three-fourths of a committee present at a meeting specially summoned, and consisting of not less than twelve members, and must be confirmed by a majority of the committee present at a subsequent meeting specially summoned.

58. The committee particularly caution members against transacting speculative business directly or indirectly, for or with officials or clerks in public or private establishments, without the knowledge of their employers.

Speculative business for officials or clerks prohibited. Penalty.

Members disregarding this caution are liable to be dealt with in such manner as the committee may deem advisable.

A resolution for expulsion or suspension must be carried by a majority of three-fourths of a committee present at a meeting specially summoned, and consisting of not less than twelve members, and must be confirmed by a majority of a committee present at a subsequent meeting specially summoned.

59. No application which has for its object to annul any bargain in the Stock Exchange shall be entertained by the committee, unless upon a specific allegation of fraud or wilful misrepresentation.

Inviolability of bargains.

60. The committee will not recognize any dealing in letters of allotment, either of loans or shares in new companies.

Dealings in letters of allotment.

NOTE.—It appears that when a rule states that bargains of a specified description will not be officially recognized, but does not actually prohibit them, the meaning is that the committee will not visit a refusal to carry out such bargains with expulsion or suspension from the Stock Exchange. Such bargains may still, however, be legally binding, and, therefore, where the actual parties to the bargain have carried it into effect, they are entitled to claim to be reimbursed by their respective principals; see *Marten v. Gibbon* (1875), 33 L.T. 561; 24 W.R. 87.

As to the payment of claims and collection of assets arising out of unrecognized bargains, see Rule 179.

61. A member applying for shares or stock of loans or public companies, and neglecting to pay the deposit on the same shall be considered to have violated a contract, and shall be compelled to fulfil his engagement.

Payment of deposits by allottees.

New bonds of Foreign Governments violating conditions of previous public loans. 62. The committee will not recognize new bonds, stock, or other securities, issued by any Foreign Government that has violated the conditions of any previous public loan raised in this country, unless it shall appear to the committee that a settlement of existing claims has been assented to by the general body of bondholders.

Companies issuing such securities will be liable to be excluded from the official list.

Loans raised by Powers while at war with Great Britain. 63. The committee will not, after the restoration of peace, recognize, or allow the quotation of, any loan raised by a power whilst at war with Great Britain.

64. No member shall enter into bargains in prospective dividends on shares or stock of railway or other companies.

Bargains in dividends forbidden. NOTE.—The wording of this rule was originally similar to that of Rule 60; but after the decision in *Marten v. Gibbon*, a prohibition was placed upon dealings in prospective dividends, and such dealings might now be visited with expulsion from the Stock Exchange. See the note to Rule 60.

Arbitration. 65. All disputes between members, not affecting the general interests of the Stock Exchange, shall be referred to arbitration; and the committee will not take into consideration such disputes, unless arbitrators cannot be found, or are unable to come to a decision.

Bargains to be checked. N.B.—The committee strongly recommend that all bargains be checked on the following day.

NOTE.—As to the checking of bargains, see p. 55, *ante*.

Reference for payment to non-members not sanctioned. 66. No member shall be obliged to take a reference for payment to a non-member; nor shall he be obliged to pay a non-member for securities bought in the Stock Exchange.

Cheques for clearing. Demand for bank notes. 67. Cheques must be passed through the Clearing House, unless the drawer consent to their being otherwise presented. But if a member requires bank notes in payment for securities sold, without having made such stipulation at the time of making the bargain, he must give notice to that effect before half-past eleven o'clock on the day of delivery, and payment shall be made upon delivery of the securities or the bank receipt.

NOTE.—The Clearing House mentioned in this rule refers to the bankers', not to the Stock Exchange, Clearing House.

As to payment generally, see pp. 163–165, *ante*.

Seller may require payment of 68. A seller, having transferred or delivered stock or other securities, has a right to demand payment from the member who

passed him the ticket; and in case the seller apply to the issuer of the ticket, and fail to obtain payment, or receive a cheque which is dishonoured, the member from whom he received the ticket shall make immediate payment.

purchase-money of his buyer.
Dis-honoured cheques.

NOTE.—The usual course is for the selling broker to receive payment directly from the ultimate purchaser's broker, the immediate sellers merely paying or receiving differences according to the rise or fall of the market, and only to apply to the member who passed the ticket to him when the ultimate purchaser fails to pay, or his cheque is dishonoured.

69. A seller may require payment of the difference between the price marked on the ticket, and the making-up price of the day on which the ticket is tendered, but if such making-up price be above the price of sale, he shall only be entitled to claim the difference up to the price of sale.

Difference between price marked on ticket tendered and that at which sold may be demanded.

70. In cases of loans, the lender is not entitled to place beyond his control shares or stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to re-transfer the shares or stock given as security for such loan. But this liability does not apply to a member who has taken in shares or stock upon continuation.

Loans, dealing with the security. Security to be returned when required. Continuation.

All continuations shall be effected at the making-up price, or at the then existing market price.

NOTE.—When a loan is negotiated on the Stock Exchange, it is generally re-payable at the following settlement. The practice is for the lender to advance the full market value of the securities offered in pledge, and in case of renewal, the amount lent is augmented by the lender, or partially repaid by the borrower, as the securities have risen or fallen in value since the last settlement; see *Ex parte Marnham* (1860), 2 De G. F. & J. 634; 30 L.J. Bk. 1; 3 L.T. 516; 9 W.R. 131. On the morning of the day on which the loan is repayable it is customary for the pledgee to send back the securities to the borrower, who then sends a cheque for the amount of the loan, or, if unable to do so, returns the securities or other securities of equal value. The return by the pledgee of the securities in this manner does not affect his right to them, if he does not receive a good cheque or securities of equal value: *Burra v. Ricardo* (1835), 1 C. & E. 478.

It was argued in *Langton v. Waite* (1868), L.R. 6 Eq. 165, 172; 37 L.J. Ch. 345; 18 L.T. 80; 16 W.R. 508, that there was a custom on the Stock Exchange which enabled a lender of money on a pledge of stock to sell the stock during the continuance of the loan. But it was held that the custom was not proved, and it is now settled law that the pledgee is not at liberty to do anything inconsistent with the keeping up

of the pledge, although he is permitted to deal with it to a limited extent.

As to the payment of fees, etc., on loans, see Rule 100. And as to loans and mortgages of securities generally, see chap. xii.

A loan or mortgage of securities is to be distinguished from a continuation, to which at first sight it bears a very close resemblance. For a continuation is a purchase of the securities continued with an undertaking to re-deliver at a future date securities of the same kind and amount, but not the identical securities received as in the case of a loan or pledge; see *Bongioranni v. Société Générale* (1886), 54 L.T. 320. Consequently, while the pledgee of securities has, at the most, a very limited power of disposal, the person with whom a continuation is effected becomes absolute owner of the securities, and may dispose of them as he pleases.

Continuations are effected at the existing market price, when no making-up price is fixed. As to making-up prices, see p. 62, *ante*.

Employment of officials in buying-in or selling-out, etc.

71. Buying-in or selling-out must be affected publicly by the officials of the Buying-in and Selling-out Department, appointed by the Committee for General Purposes, who shall trace the transaction to the responsible party and claim the difference thereon.

NOTE.—As to buying-in and selling-out generally, see chap. x., pp. 207-209, *ante*.

When securities may not be bought in.

72. Bonds, shares, or other securities shall not be bought in, while they are known to be out of the control of the seller for the payment of calls, or the receipt of interest, dividends, or bonus; and the committee, on being applied to, will fix a day on which they may be bought in.

How dividends are to be accounted for.

73. In the settlement of all bargains, dividends are to be accounted for at the net amount receivable after deduction of income tax.

Fixing price of foreign coupons.

In the case of dividends payable only abroad, the secretary to the Share and Loan Department shall fix a price for the coupons in sterling money which shall be posted in the Stock Exchange, and at which the dividends shall be accounted for.

Current coupon.

Securities to bearer are not deliverable on the settling-day without the current coupon.

When deliverable ex coupon.

Securities to bearer, with coupon payable on the settling-day, shall be delivered ex coupon.

When dividend payable after settling-day.

When the dividend is payable after the settling-day, outstanding bargains in securities to bearer shall be settled with the current coupon, otherwise the buyer shall have the right to demand the market value of the coupon, which, in case of dispute, shall be fixed by the secretary to the Share and Loan Department.

74. Fifteen clear days between delivery and the closing of the books of the company be allowed by the seller to the buyer of shares of American railway companies, in order to afford time for transmission of the certificates to New York and Philadelphia.

Time allowed for transmission of American certificates for registration.

75. Six weeks between delivery and the closing of the books of the company be allowed by the seller to the buyer of shares of South African companies having registration offices in South Africa only, in order to afford time for transmission of the certificates thereto.

Time allowed for transmission of South African certificates for registration.

76. All optional bargains for the consols account shall be declared at a quarter before three o'clock two days before the account-day, and those made for a foreign settlement shall be declared at a quarter before one o'clock *on the first making-up day*.

Options, consols account.

Options for any other day must be declared at a quarter before three o'clock, or on Saturdays at a quarter before one o'clock.

Foreign. Daily.

NOTE.—As to options, see p. 24, *ante*.

77. The hours of business in the Stock Exchange are from eleven until three o'clock. On Saturdays business will close at one o'clock.

Hours of business.

When the ticket-day is fixed for a Saturday, the House will be kept open until THREE o'clock, for the purpose of the settlement only, the regulations for which shall be the same as on ordinary ticket-days.

Ticket-day on Saturdays.

The Stock Exchange will be closed on the following days, viz.:—

Holidays.

1st January,
Easter Monday,
1st May,
Whit Monday,
The first Monday in August,
1st November,
26th December,

unless specially ordered otherwise by the committee.

When either the 1st January, 1st May, 1st November, or 26th December falls on a Sunday, the House will be closed on the day following.

**RULES APPLICABLE TO ENGLISH, INDIA, CORPORATION,
AND COLONIAL GOVERNMENT INSCRIBED STOCKS, &c.**

Bargains
when
no time
specified.

78. All bargains, when no time is specified, shall be considered as made for the existing consols account, except bargains in Colonial Government stocks, which shall be for the foreign settling day.

NOTE.—A majority of the bargains done in consols are “cash bargains,” for immediate delivery; only bargains for very large amounts being made for the account. In ordinary cases, when making a bargain it is usual to add the words “for money,” when the bargain is taken out of the rule.

Dealing
for future
accounts.

79. The committee will not recognize any bargain for a future account, if it shall have been effected more than eight days previously to the close of the pending account.

NOTE.—See the notes to Rule 60.

Offers to
buy or sell.

80. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof; and an offer to buy or sell stock, when no amount is named, is binding to the amount of £1000 stock.

Transfer
fees.

81. If the seller of English, India, or Corporation stock shall not receive from the purchaser a transfer-ticket by ten minutes before one o'clock, he may demand two shillings and sixpence for each transfer-fee, which may be paid for the actual transfer of such stock. On a settling-day, if the transfer-ticket is not delivered by a quarter before one o'clock, the seller may claim of the purchaser two shillings and sixpence for every £1000 stock.

Time for
selling-out.

If the seller shall not receive a transfer-ticket before half-past one o'clock on the day it was contracted to deliver the said stock, he may sell out the same and claim of the person who held the ticket at half-past one o'clock any loss or charge incurred.

Liability
on late
passed
tickets.

If the ticket has not been issued before half-past twelve o'clock, any loss or charge incurred shall fall on the issuer of the ticket. On Saturdays stock may be sold out at a quarter to one o'clock.

Time for
selling-out
on Satur-
days.

82. The buyer of Colonial Government inscribed stocks for the account must issue tickets before two o'clock on the ticket-day, and the deliverer of Colonial Government inscribed stocks who shall not receive a ticket by three o'clock on the ticket-day, may sell out on the settling-day, or on any following day.

Time for
issue of
tickets.

Selling-
out.

If a ticket shall not have been regularly issued before two o'clock on the ticket-day, the issuer thereof shall be responsible for any loss occasioned by such selling-out. Should a ticket have been regularly put into circulation, the holder at three o'clock on the ticket-day shall

be liable. In case of selling-out, on any subsequent day, the holder of the ticket at three o'clock on the previous day, or at one o'clock on Saturdays, shall be liable. Should, however, undue delay in passing the ticket be proved, the member causing such delay will be held responsible.

83. Stock bought for a specified day, and not then delivered, may be bought in on the following day at eleven o'clock, and the member causing the default shall pay any loss incurred, and also in the case of English and India stocks dealt in for the settling-day one-eighth per cent. for the non-delivery of the stock. This fine shall attach to all stock not delivered whether it shall have been bought-in or not. Buying-in.
Fine.

84. Stock receipts must be delivered by half-past three o'clock; but if a deliverer elect (under Rule 68) to deliver a stock receipt to the member with whom he has dealt (such member not being the issuer of the ticket) he shall deliver such receipt by a quarter-past three o'clock. Time for
delivery of
stock
receipts.

Stock receipts must be delivered by half-past one o'clock on Saturdays.

English and India Government and Corporation securities to bearer, must be delivered before three o'clock, or before one o'clock on Saturdays. Bearer
securities.

85. When stock is borrowed without any stipulation as to its return, the borrower or lender may be called upon to deliver or take it on the following day, whether a regular transfer-day or not. Borrowed
stock.

NOTE.—As to loans generally, see chap. xii.

86. In cases of loans on the deposit of stock, when the striking of the balances for dividend takes place before repayment of the loan, the lender shall allow the dividend, deducting interest thereon till the day of payment of, and at the same rate as, the loan. Loans on
stock.
Dividend
allowed.

87. Purchasers of bank stock may require, at the seller's expense, as many transfers as there are even thousand pounds stock in the sum bargained for. Limit as to
number of
transfers.

88. The clerk of the House shall fix the making-up prices, by taking the average price between eleven and one o'clock on each of the two days preceding the account, and in the case of English, India, and Corporation stocks between eleven and a quarter before one o'clock on the settling-day; and no making-up shall be binding unless at such fixed prices. Fixing
making-up
prices.

NOTE.—As to the making-up, see p. 67, *ante*.

As to making-up prices in other securities, see p. 62, *ante*.

RULES APPLICABLE TO SECURITIES DELIVERABLE BY DEED OF TRANSFER.

Bargains
when no
time is
specified.

89. Bargains in stocks and shares, when no time is specified, shall be considered as made for the existing account; but those made after one o'clock on the day before the ticket-day, shall, unless otherwise specified, be for the ensuing account.

Dealing
for future
accounts.

90. The committee will not recognize any bargain in shares or stock effected for a period beyond the ensuing two accounts.

NOTE.—See the notes to Rule 60.

Offers to
buy or sell.

91. An offer to buy or sell an amount of shares or stock at a price named, is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell shares or stock, when no amount is named, is binding to the amount of £1000 stock, or to the amount of fifty shares. *If, however, the market value of the shares is above £15 each, then an offer is binding only to the extent of 10 shares, and if the market value is not over £1 each, an offer is binding to the extent of 100 shares.*

Responsi-
bility of
seller for
regularity
of docu-
ments and
for divi-
dend.

Disputed
title after
registra-
tion.

92. The seller of shares or stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed to the transferee to execute and duly lodge such documents for verification and registration. When an official certificate of registration of such shares or stock has been issued, the committee will not (unless bad faith is alleged against the seller) take cognizance of any subsequent dispute as to title, until the legal issue has been decided, the reasonable expenses of which legal proceedings shall be borne by the seller.

NOTE.—Where forged securities have been delivered in the place of genuine, the committee will compel the deliverer either to replace them with genuine, or to refund the purchase-money, and the selling broker is then entitled to an indemnity from his principal; see *Smith v. Reynolds* (1892), 66 L.T. 808. But where the committee have ordered the selling broker to refund an amount in excess of the price actually received by the principal for the securities, the broker is not entitled to recover such excess from his principal; see *Westropp v. Solomon* (1849), 8 C.B. 345.

As to delivery of securities generally, see chap. viii.

As soon as the contract is complete between the parties, but before the purchaser has been placed in the position of legal owner, the vendor becomes trustee for him of the securities sold, and is accountable for all dividends and bonus received in respect of them. The purchaser is also entitled to claim any new shares or stock issued in respect of existing shares or stock which he has bought, provided he claim them within a reasonable time; see Rule 107; *Stewart v. Lupton* (1874), 22 W.R. 855.

See also p. 149, *ante*. See Rules 126, 127 for similar provisions in the event of bearer securities.

As to the liability of the company when share certificates have been issued, see p. 233, *ante*. After the legal question as to the title to the shares has been settled in the courts, the committee apparently reserve to themselves the right to do what, in their opinion, is right between the members who are parties to the contract, or non-members where the latter sign a submission to arbitration under Rule 55. It will be noticed that the seller is to bear the *reasonable* expenses of legal proceedings only. This would perhaps be held to mean that where the party attacking failed in his case, his expenses would not be reasonable as against the seller.

93. The committee will not (except under special circumstances) interfere in any question arising from the delivery of shares, stock, bonds, or debentures by transfer in blank. Transfers in bank.

NOTE.—The language of this rule is somewhat different from that of Rule 60, but the effect would no doubt be the same. See the notes to that rule.

94. The buyer who takes up securities deliverable by deed of transfer shall, before twelve o'clock on the ticket-day, issue a ticket with his own name as payer of the purchase-money, which ticket shall contain the amount and denomination of the stock or security to be transferred; the name, address, and description of the transferee in full; the price, the date, and the name of the member to whom the ticket is issued. Each intermediate seller, in succession, to whom such ticket shall be passed, shall endorse thereon the name of his seller. Mode of procedure on ticket-days.
Tickets to contain full particulars.
Endorsement.

All tickets representing stock or shares which, at the time, are subject to arrangement by the Settlement Department, shall be passed through the accounts at the making-up price of the day before the ticket-day, and the stock or shares paid for at that price; but the consideration money in the deed must be at the price on the ticket. Tickets for stocks arranged by Settlement Department.

A member receiving a ticket from the issuer after twelve o'clock on the ticket-day, shall note the same on the back of the ticket; it is also required that the member who first receives a ticket Notification of time of passing.

Afterone o'clock,
After half-past one o'clock,
Aftertwo o'clock, or
After half-past two o'clock,

shall draw a line noting such times; and members receiving tickets after three o'clock, or at any time on any subsequent day, shall mark the exact time at which they are received.

Members omitting to note the times thus fixed may become liable

for losses occasioned by selling-out in case undue delay is proved under the provisions of Rule 103.

Splitting tickets. A member splitting a ticket shall pay any increased expense caused by such splitting, and shall retain the original ticket. Split tickets must bear the name of the issuer of the original ticket.

Time for claiming. No claim for loss on a split ticket shall be valid unless made by the original claimant within three months after the date of the ticket, but the member splitting the ticket shall be liable to intermediate claimants for a period of four months.

Selling-out. A member failing to keep the original ticket will be required to trace it in case of selling-out.

Time for commencement of passing. On ticket-days the passing of tickets shall commence at ten o'clock.

Time for leaving tickets at offices. Tickets may be left at the office of the seller up to twelve o'clock on ticket-days, and all tickets not so left must be passed in the settlement rooms.

Tickets may be issued and passed on the day before the ticket-day, but the buying-in upon tickets so issued shall not be allowed until the eleventh day after the ticket-day.

Shares consolidated into stock. 95. When shares have been converted into consolidated stock and are so quoted in the official list, buyers are required to pass tickets for stock, and not for shares.

Antedated or undated tickets. 96. A member not refusing an antedated ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary ticket, the liabilities remain with the member putting such ticket again into circulation; and any member holding an undated ticket shall not be liable for any loss arising from the shares or stock having been bought in, unless such ticket has been seven days in his possession.

Alteration or detention of tickets. 97. A member who makes an alteration in, or improperly detains a ticket, shall make good any loss that may occur thereby.

NOTE.—As to the re-admission of a member who is declared a defaulter through loss incurred by improperly passing or detaining a ticket, see Rule 165.

Prices marked on ticket. 98. The deliverer shall cause the shares or stock to be transferred at the price marked upon the ticket; but no member shall be compelled to take a ticket at any price not quoted in the official list during the account, unless the bargain represented by such ticket shall have been made within the two preceding accounts.

NOTE.—Although the deliverer of securities is bound to transfer them at the price marked on the ticket, that price is not necessarily the whole amount which he receives. The securities may have fallen in value

between the time when the deliverer sold and the time when the ultimate purchaser bought, in which case he will receive the difference from the person with whom he originally made the contract.

The committee will not recognize, nor enforce by expulsion, the carrying out of bargains effected for a period beyond the two ensuing accounts; see Rule 90.

99. The deliverer may, previously to delivery, pay any call made on registered shares, although not due, and claim the amount of the issuer of the ticket. Pending falls.

NOTE.—Where the broker who issues the ticket has repaid to the seller the amount of the call, he is entitled to be reimbursed by his principal: *Bayley v. Wilkins* (1849), 7 C.B. 886; 18 L.J. C.P. 273; and see p. 108, *ante*.

100. The buyer of shares or stock shall pay the *ad valorem* duty and registration fee, and shall state on the ticket the amounts in which he may desire to have the shares or stock transferred (provided no such amounts require a higher stamp than £50). Payment of stamps.

In cases of loans the borrower shall pay the nominal consideration stamp of ten shillings, the registration fees, and the mortgage stamp. Stamps on loans.

NOTE.—As to loans, see Rule 70 and the notes appended thereto.

101. The buyer shall, in the event of his ticket being split, pay for any portion of shares or stock which may be presented, provided the number be not less than ten shares, or the value less than £200. Portions to be paid for.

NOTE.—As to split tickets, see p. 69, *ante*.

102. The buyer of shares or stock may refuse to pay for a transfer deed unaccompanied by coupons or certificates, unless it be officially certified thereon that the coupons or certificates are at the office of the company. But if the transfer deed be perfect in all other respects, the shares of stock must not be bought in until reasonable time has been allowed to the seller to obtain the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfer deeds, the coupon may be deposited with the secretary of the Share and Loan Department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfer deeds, which shall then be a valid delivery. No person is to look to the managers or Committee of the Stock Exchange, as being liable for the due or accurate performance of those duties, the managers and committee holding themselves, and being held, entirely irresponsible. Coupons or certificates with transfer deed.
Division of coupons.
To be certified by secretary of Share and Loans Department.

in respect of the execution, or of any mis-execution, or non-execution, of the duties in question.

NOTE.—The seller can, of course, only deliver coupons or certificates to the purchaser when he has a coupon or certificate for the exact amount which he is selling to a single purchaser; in other cases he must take the course pointed out in the rule. In due time, after the certificates have been deposited with the company, new certificates are made out for the various amounts transferred to the purchasers, while, if the seller retains any part of his holding, he receives a certificate for the balance, or, as it is usually called, a “balance” certificate.

As to buying-in generally, see pp. 207–8, *ante*.

Selling-out.

103. The deliverer of shares or stock who shall not receive a ticket by half-past two o'clock on the ticket-day, may sell out such securities up to three o'clock. If a ticket shall not have been regularly issued before twelve o'clock, the issuer thereof shall be responsible for any loss occasioned by such selling-out. Should, however, a ticket have been regularly put into circulation, the holder thereof at two o'clock shall be responsible for any selling-out on the ticket-day. If the selling-out take place on the next day, the holder of the ticket at three o'clock on the ticket-day shall be liable;—unless such ticket was in the Settlement Department at three o'clock, in which case the holder of such ticket at four o'clock shall be liable. In case of selling-out on any subsequent day, the holder of the ticket at three o'clock on the previous day, or at one o'clock on Saturdays, shall be liable, unless he can prove undue delay in passing the ticket.

Settlement Department.

Release of intermediates.

Should the deliverer allow two clear days to elapse without availing himself of his right to sell out, his buyer shall be released from all loss in cases where the ticket has not been passed in consequence of the public declaration of any member as a defaulter. If a seller does not deliver shares or stock within thirteen clear days, the intermediate buyer from whom he received the ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase-money.

NOTE.—As to selling-out generally, see pp. 208, 209, *ante*.

As to the re-admission of a member who is declared a defaulter through loss incurred by improperly passing or detaining a ticket, see Rule 165.

Where the loss is borne by a member whose principal is in default, the member is entitled to be indemnified by the principal. See p. 107, *ante*.

Tickets for sold-out shares.

104. When shares or stock are sold out, if a ticket be not given

within half an hour after the time of sale, the transfer may be made into the name of the buyer.

NOTE.—As to selling-out, see Rule 103.

105. If shares or stock are not delivered within ten days, the Buying-in. issuer of the ticket may buy in the same against the seller at or after half-past one o'clock on the eleventh day after the date of the ticket, or in the case of companies which prepare their own transfers, on the eleventh day after the earliest day a transfer can be procured, or on any subsequent day.

One hour's public notice of such buying-in must be posted in the Stock Exchange; the notices to be posted not later than half-past twelve o'clock. On Saturdays notices shall be posted by half-past eleven o'clock, and no buying-in shall take place before a quarter-past twelve o'clock. The name into which the shares or stock are to be transferred must be stated in the order to buy-in. The loss occasioned by such buying-in shall be borne by the ultimate seller, unless he can prove that there has been undue delay in the passing of the ticket on the part of any member, who shall in that case be liable. Notice of buying-in.

Shares or stock thus bought in and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the member causing such re-purchase. Non-delivery of bought-in stock, etc.

In case the official shall not succeed in executing an order to buy-in, the notice of such buying-in shall remain on the general notice board, and the official may buy-in shares or stock, if not delivered, on any subsequent day without further notice, but not before two o'clock, or on Saturdays before a quarter-past twelve o'clock.

NOTE.—The ten days mentioned in the first paragraph of this rule is the time within which the vendor is at liberty to take any objection he may see fit to the name which has been passed to him as that of the purchaser, in the place of the jobber with whom he originally contracted. Should the vendor fail to take any objection within the time thus limited, the jobber is discharged from liability, unless the name which he has passed is that of a person who is legally incapable of contracting, such as an infant or lunatic, in which case his liability continues: *Nickalls v. Merry* (1875), L.R. 7 H.L. 530; 45 L.J. Ch. 575; 32 L.T. 623; 23 W.R. 663; and see p. 141, *et seq.*

The loss mentioned in the second paragraph, as occasioned by buying-in, may have to be borne not only by a member who unduly delays to pass the ticket, but also by the member who occasions undue delay by omitting to record on the ticket the time at which he received it as directed in Rule 94. Where the loss falls on the member who actually sells the security, and is caused by his principal's default, he is entitled to be indemnified by the principal. See p. 107, *ante*.

Time for buying-in. 106. The issuer of a ticket who shall allow thirteen clear days from the date of his ticket, or in the case of companies which prepare their own transfers, thirteen clear days after the earliest day a transfer can be procured, to elapse without buying-in or attempting to buy-in shares or stock, shall release his seller from all liability in respect of the non-delivery of the securities, unless he shall have waived his right to buy-in at the request or with the consent of his seller; and the holder of the ticket shall alone remain responsible to such issuer for the delivery of the securities.

Right to new shares. 107. The buyer is entitled to new shares or stock issued in right of old, provided that, within reasonable time, he specially claim the same, in writing, from the seller. Claims should be entered as bargains, and as such be checked in the usual manner.

Letters of renunciation. When practicable, claims are required to be settled by letters of renunciation, but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old shares or stock.

Fixing price for new shares. If the new shares or stock cannot be obtained by letters of renunciation, or by the transfer of the old, the committee will fix a price at which the same shall be temporarily settled, and which amount may be deducted by the buyer from the purchase-money of the old shares or stock, until the special settlement.

Unchecked claims. The committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling-day.

NOTE.—It seems that the purchaser is entitled to claim new shares or stock issued in right of old, even after the old shares or stock have already been quoted “ex new:” *Stewart v. Lupton* (1874), 22 W.R. 855. See Rule 126 for a similar provision in the case of bearer securities.

The Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 79, and Sched. I., contains the following provisions as to stamping letters of allotment and renunciation: Any letter of allotment and letter of renunciation, or any other document having the effect of a letter of allotment:

(1) Of any share of any company or proposed company;

(2) In respect of any loan raised, or proposed to be raised, by any company, or by any municipal body or corporation;

(3) Issued or delivered in the United Kingdom, of any share of any foreign or colonial company or proposed company, or in respect of any loan raised, or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company;

is to bear an adhesive penny stamp, which is to be cancelled by the person who executes it, and any one who executes, grants, issues, or delivers such document before it is duly stamped, will incur a fine of £20.

As to special settling days, see pp. 60, 61, *ante*.

108. On the day before the ticket-day, and on the ticket-day, the clerk of the House shall, at twelve o'clock, fix the making-up prices by taking the then actual market prices, and no making-up shall be binding, unless at such fixed prices. In case of dispute as to the making-up price, or of any omission in fixing the same, the clerk of the House shall act upon the decision of two members of the committee.

NOTE.—The actual price at which bargains are made up is the middle price of the security at 12 o'clock. If, for instance, the market price of Brighton A at 12 o'clock on making-up day were 149½–150½, the making-up price would be 150.

109. On the morning of the settling-day all unsettled bargains shall be brought down and temporarily adjusted at the making-up price of the ticket-day, except bargains in stocks and shares, subject to arrangement by the Settlement Department, which shall be brought down and temporarily adjusted at the making-up price of the day before the ticket-day.

NOTE.—See note to the preceding rule.

110. No member shall be required to pay for shares or stock presented after half-past two o'clock; or after one o'clock on Saturdays.

RULES APPLICABLE TO SECURITIES TO BE RER.

111. Bargains, when no time is specified, shall be considered as made for the existing account; but those made after one o'clock on the day before the ticket-day, shall, unless otherwise specified, be for the ensuing account.

112. The committee will not recognize any bargain effected for a period beyond the end of the ensuing two accounts.

NOTE.—See the notes to Rule 60.

113. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof, not less than the under-mentioned sums, and divisible by the same: viz.—

£1000 stock or scrip.

Fcs. 750 French rentes.

10 shares.

An offer to buy or sell United States bonds or shares when no amount is named is binding to the amount of \$5000 bonds or 100 shares.

American
bonds and
shares,
amount
deliver-
able.

114. No member shall be required to accept the delivery of a certificate of American shares of a larger amount than 10 shares of \$100 each nominal capital, or 20 shares of \$50 each, nor an American bond of a larger amount than \$1000, except upon special contract.

Selling-
out.

115. The seller of securities for a particular day, which the buyer is not prepared to pay for by half-past two o'clock on that day (or half-past twelve o'clock on Saturdays), may sell-out the same, and claim of the buyer any loss incurred.

NOTE.—As to selling-out generally, see pp. 208, 209, *ante*, and also Rule 71. Where the loss borne by the member under this rule is caused by his principal's default, such member is entitled to be indemnified by his principal. See p. 107, *ante*.

Tickets
shall be
passed.

116. On the ticket-day between ten and one o'clock, tickets shall be passed without any price thereon, and the accounts made up therewith are to be settled at the making-up price of the day.

Tickets
must bear
numbers.

Tickets must bear distinctive numbers, and be for the following amounts, viz. :—

Amounts
deliver-
able.

£1000 stock, or multiples of £1000 up to £5000.

£1000 Italian stock, or multiples thereof up to £5000. Also £800, or multiples thereof up to £4800.

\$5000 American stock, or multiples thereof, up to \$25,000.

Fcs. 1,500 French 3 per cent. rentes, or multiples thereof up to Fcs. 6000.

10 shares, or multiples thereof up to 100.

Tickets for £500 stock may be passed for bargains or balances of that amount.

Smaller amounts must be settled without tickets.

Time of
issue.

Tickets shall not be issued later than half-past twelve on the ticket-day.

Tickets shall not be split, except in the Settlement Department in cases where the sub-committee appointed to control that department may consider it necessary.

To be
endorsed.

Every member is required to endorse on the ticket the name of the member to whom it is passed.

Time for
commence-
ment of
delivery.

On the settling-day, and on the day after the settling-day, the delivery of securities shall commence at ten o'clock.

Sellers shall accept tickets, and if they elect to settle with their immediate buyers under the provisions of Rule 68, they shall deliver their securities before half-past twelve o'clock.

The holder of tickets passed under this rule, and of tickets passed by the Settlement Department may deliver securities up to two o'clock on settling-days.

A member not issuing a ticket shall be required to pay for stock up to half-past two o'clock.

Buyers shall pay for such portion of securities as may be delivered within the prescribed times. Portions to be paid for.

117. A member shall be required to pay for securities presented until half-past two o'clock on any day other than settling-days. On Saturdays he shall not be required to pay for securities after one o'clock. Time for requiring payment.

118. Securities bought for any period except the settling-day, which shall not be delivered by half-past two o'clock, or by half-past twelve o'clock on Saturdays, may be bought in on the same or any subsequent day, and any loss occasioned by such re-purchase shall be borne by the seller. Buying-in.

But securities bought for the settling-day, and not delivered by half-past two o'clock, may be bought in on the following or any subsequent day, after one hour's notice to be posted in the foreign market announcing the intended purchase; the notices to be posted not later than half-past twelve o'clock. The buying-in not to take place before half-past one o'clock, nor before quarter-past twelve o'clock on Saturdays, on which days public notice shall be posted by half-past eleven o'clock. The loss shall be borne by the member who shall not have delivered the shares or stock by half-past two o'clock on the previous day, or by one o'clock on Saturdays. Notice.

Stock thus bought in, and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the member causing such re-purchase. Non-delivery of stock bought-in.

In case the official shall not succeed in executing an order to buy in, the notice of such buying-in shall remain on the general notice board, and the official may buy in such stock, if not delivered, on any subsequent day without further notice, but not before two o'clock, or on Saturdays before a quarter-past twelve o'clock.

A member neglecting to take the numbers of securities delivered after time, shall be required to trace out the member responsible for the loss. Neglecting to take numbers.

NOTE.—As to buying-in generally, see pp. 207, 208, *ante*. Where the loss occasioned by buying-in falls on the member who actually sold the security, and is due to the default of his principal, he is entitled to be indemnified by the principal. See p. 107, *ante*.

119. A member who shall allow two clear days to elapse without availing himself of his right to buy in, or without attempting to buy in securities, releases the seller from any loss in consequence of the Limit of time for buying-in.

Release of inter-mediates. public declaration of any member as a defaulter, unless he shall have waived such right at the request, or with the consent, of the seller. The holder of a ticket who shall allow two clear days to elapse without delivering the stock releases his buyer from any loss in consequence of the declaration of any member as a defaulter.

Making-up prices. 120. The clerk of the House shall, at twelve o'clock on each of the two days preceding each settling, fix the making-up prices of all securities, by taking the then actual market prices; and no making-up shall be binding unless at such fixed prices.

NOTE.—See note to Rule 108.

Adjustment of unsettled accounts. 121. On settling-days, all unsettled bargains shall be brought down and temporarily adjusted, at prices to be fixed by the clerk of the House at half-past two o'clock, and the differences shall be paid in the usual manner.

Exchequer bills. 122. Bargains in Exchequer Bills are for bills not filled up to order.

French rentes. 123. Bargains in French rentes, unless otherwise specified, shall be settled in certificates to bearer, and at a fixed exchange of 25 fcs. per pound sterling.

Foreign coupons when returnable. 124. Foreign coupons sold at the exchange of the day, and not paid, are returnable with all reasonable expenses.

Subject to drawing. 125. The buyer of bonds or other securities subject to periodical drawing, shall not be entitled to claim delivery thereof previous to the day for which they were bought. Bargains must be settled in securities which have not been drawn.

Drawn bonds. In case of the erroneous delivery of any drawn securities the buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) shall deliver such securities back to the person who held them at the time of the drawing, or shall pay to him any proceeds received from such drawing, providing the said securities or the proceeds thereof be traced to, and remain in the possession and under the control of such buyer, all intermediate members being released from liability.

No claim *by the seller* in respect of the erroneous delivery of drawn securities will be entertained by the committee unless made within nine calendar months.

NOTE.—As to delivery generally see pp. 158–163, *ante*. It will be noticed that it is the seller only who is precluded from making a complaint in respect of a delivery of drawn bonds after the lapse of nine months from the date of the delivery. If the purchaser should have any complaint to make, the committee will apparently entertain it after that period.

126. The buyer is entitled to new securities issued in right of old, provided that within reasonable time he specially claim the same in writing from the seller, who may after due notice require the buyer to complete the bargain in old securities. Claims should be entered as bargains, and as such be checked in the usual manner. Buyer entitled to new securities.

The committee will fix a price for the new securities, which may be deducted by the buyer from the purchase-money of the old securities, until the special settlement.

The committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling-day.

NOTE.—The purchaser is entitled to claim new securities issued in right of old, even after the old have been quoted “ex new:” *Stewart v. Lupton* (1874), 22 W.R. 855. See Rule 107 for a similar provision in the case of inscribed stocks and shares.

As to special settling-days and settlements, see Rules 130–139, *post*.

127. [The deliverer of securities on tickets is required to apportion such securities to each ticket at the time of delivery, and takers of securities, in order to secure their right under this rule, shall keep such tickets and the numbers of the securities to which they were respectively apportioned, or, in the case of Settlement Department tickets, the numbers of such tickets.] Genuineness of securities.

The deliverer is responsible for the genuineness of securities delivered, and in case of his death, failure, or retirement from the Stock Exchange, such responsibility shall attach to each member in succession, through whose account the ticket for such securities shall have passed.

French and Egyptian securities to bearer which, under French or Egyptian law, have been officially notified as stopped, are returnable to the deliverer. Stopped bonds.

NOTE.—As to the delivery of forged bonds, and bonds which have been stolen after they have been called in for payment, see pp. 161, 162, *ante*. The official notification of the stoppage of securities under French law takes place through the Bulletin Officiel. See Rule 92 for similar provisions in the case of inscribed stocks and shares.

128. Every bond or scrip share is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered in a damaged condition, or deficient in, or with irregular, coupons, should such bonds or shares be detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing them was aware of their being imperfect. Torn or damaged bonds.
Irregular coupons.

Railway debentures, Colonial and foreign railway debentures, 129. Bonds and debentures of railways in Great Britain, Ireland, and the East Indies, shall be dealt in so that the accrued interest, up to the day for which the bargain was done, be paid by the buyer; but bargains in bonds and debentures of colonial and foreign railways shall include the accrued interest in the price.

SPECIAL SETTTLING DAYS.

Bargains in new loans and shares, etc. 130. Bargains in the scrip or bonds of a new loan, or the shares or other securities of a new company, are contingent on the appointment of a special settling-day.

NOTE.—The committee will grant a special settling-day for the shares of a new company, or for other securities, provided that the undertaking is of sufficient magnitude, that the various conditions imposed by the rules immediately following have been complied with, and that fraud is not alleged against the undertaking. Where a special settlement has been procured by false and fraudulent statements made to the committee by the promoters or directors of the undertaking, the statements will not, it appears, afford ground for an action by persons who have been induced to take shares, etc., through a knowledge that such a settlement has been granted, though where the promoters and directors have combined together with a view to obtaining a special settlement, and thereby defrauding the public, they may have rendered themselves indictable for a criminal conspiracy. See pp. 200-204, *ante*.

Appointment of special settling-day. Documents. 131. The secretary of the Share and Loan Department shall give three days' public notice of any application for a special settling-day in the scrip or bonds of a new loan previously to its being submitted to the committee, who will appoint a special settling-day, provided that sufficient scrip or bonds are ready for delivery, as vouched for by a certificate verified by the statutory declaration of the contractors or agents stating the amount allotted; and that the scrip and bonds are in reasonable amounts.

Settling-days in foreign or colonial loans. 132. Bargains in foreign loans which are officially quoted in the country to which they belong shall be for the ordinary settlement.

133. *The secretary of the Share and Loan Department shall give three days' public notice of any application for a special settling-day in the shares or other securities of a new company previously to such application being submitted to the committee, who will appoint a special settling-day provided that sufficient scrip or shares are ready for delivery.*

OFFICIAL QUOTATIONS.

134. The committee may order the quotation of the scrip or bonds of any loan the dividends of which are payable in this country, provided that the application, of which three days' public notice must be given, is accompanied by the prospectus, by notarial copies or translations, or other satisfactory evidence of the powers under which the loan is contracted; that the loan has been publicly negotiated by tender, contract, or otherwise; that the bonds specify the amount and conditions of the loan, the powers under which it has been contracted, and the numbers and denominations of the bonds issued, and that they bear the autographic signature of the contractor or properly authorized agent.

Quotation
of scrip or
bonds of
new loans.

Bonds will not be admitted to quotation until a specimen has been submitted to the committee.

135. Bonds, the dividends of which are payable abroad, may be quoted upon satisfactory proof of the amount created and issued, and of the official quotation in the country where issued.

Quotation
of bonds
with divi-
dend pay-
able
abroad.

136. The committee may order the quotation of a new company in the official list, provided that the company is of sufficient magnitude and importance, and that the application, of which three days' public notice must be given, is accompanied by the following documents:—

Quotation
of new
companies.

The prospectus, the Act of Parliament, the articles of association, or a certificate that the company is constituted upon the cost-book system, under the Stannary laws; the original applications for shares, the allotment-book, signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien, the bankers' pass-book and a certificate from the bankers stating the amount of deposits received.

It is further required that the prospectus shall have been publicly advertised, and that it agrees substantially with the Act of Parliament or the articles of association, and, in the case of limited companies, contains the memorandum of association; that it provides for the issue of not less than one-half of the nominal capital, and for the payment of ten per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partly paid-up, with the amounts of each respectively, and also states the amount paid, or to be paid, in money or otherwise to concessionaries, owners of property, or others on the formation of the

company, or to contractors for works to be executed, and the number of shares, if any, proposed to be conditionally allotted; that two-thirds of the whole nominal capital proposed to be issued has been applied for and unconditionally allotted to the public (shares reserved or granted in lieu of money payments to concessionaries, owners of property or others, not being considered to form part of such public allotment), that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares, and that a member of the Stock Exchange is authorized by the company to give full information as to the formation of the undertaking, and be able to furnish the committee with all particulars they may require.

In cases where fully-paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares has been filed with the Registrar of Joint Stock Companies, as prescribed by the 25th section of the Companies' Amendment Act, 1867.

Of foreign shares.

137. Foreign companies partly subscribed for and allotted in this country, shall not, unless under special circumstances, be allowed a quotation in the official list, until they have been officially quoted in the country to which they belong.

Quotation of a company formed to carry on an existing business.

138. When a company has been formed to carry on an existing business, the committee may order the quotation of any of its classes of capital, as well as of its debentures or debenture stock, provided that at least two-thirds of the nominal amount of such class or classes have been unconditionally allotted to the public.

Issue of new shares within twelve months of special settling.

139. A company issuing, or promising to issue, new shares within twelve months after the first settling-day appointed by the committee, unless under special circumstances, shall be liable to exclusion from the official list.

ORDINARY SETTLING-DAYS AND OFFICIAL QUOTATION OF PRICES.

Settling-days and ticket-days.

140. The committee shall fix the settling-day for English stock at least eight days previous to the settlement of the pending account, and at their first meeting in each month they shall fix the ticket-days and settling-days for foreign stock, shares, etc., of the succeeding month.

The secretary shall give notice of the days thus appointed.

141. The settling-day in English omnium and scrip shall be two days prior to the respective days of payment of each of the several instalments, unless the payment falls on a Tuesday, in which case the settling-day shall be on the previous Monday. Settling-day in omnium, etc.

In case the payment of an instalment on foreign or other scrip falls on a settling-day, the settlement of such scrip shall take place the day previous to the payment. Instalment on scrip.

NOTE.—For an explanation of the term “omnium,” see p. 24 *ante*.

142. A list of prices of English and foreign stocks, shares, and other securities, permitted to be quoted, shall be published under the authority of the committee; and no list shall be published and sold by a member without the sanction of the committee. Price list under the control of committee.

NOTE.—A list of prices recorded between the hours of 11 a.m. and 3 p.m. is published daily at 4 p.m. by Messrs. Wetenhall, 4, Copthall Buildings, E.C., and is called the Official List.

143. The prices of all bargains may be quoted in the official list, but no price shall be inserted unless the bargain shall have been made in the Stock Exchange between members at the market price; nor on the authority of one of them, if he refuse, when required by a member of the committee, to give up the name of the member with whom he has dealt. Quotation of prices.

NOTE.—As to the expunging of prices already inserted, see Rule 149.

144. Bargains at special prices by reason of their exceptional amounts may only be quoted with distinguishing marks. Exceptional amounts.

145. Bargains in English stock for the next transfer day, or in foreign or other stocks for the following day, may be marked in the official list of money prices. Quotation of money prices, etc.

Bargains in all stocks made during the shutting, for the opening, may be quoted in the official list. Of stock during shutting.

Bargains in foreign bonds may be quoted in the official list, with or without over-due coupons. Of bonds with overdue coupons.

Omnium may be quoted for the issue of the receipts, for money, and for the next succeeding payment. Omnium.

NOTE.—For an explanation of “omnium,” see p. 24, *ante*.

146. All dealings in English stock (except bank stock), and in India stocks, for any day subsequent to the striking of the balances of such stocks for dividend, shall be ex dividend, and quoted accordingly. Quotations of stock ex-dividend.

147. Bargains in transferable shares or stock shall be quoted ex interest from the beginning of the account in which the interest may become payable; and ex dividend from the beginning of the account following that in which the dividend may have been declared, provided Quotations of shares ex dividend or ex-interest.

the dividend be made payable to the holders then registered; but in case of a subsequent shutting of a company's books for payment of the dividend, then, from the beginning of the account following that in which such shutting occurs.

Dividends on securities to bearer.

Bargains in securities to bearer shall be quoted ex dividend on the day when the dividend is payable.

Shares in foreign railways shall, when practicable, be quoted ex dividend, or ex interest, at a period in accordance with the practice of foreign bourses.

Bargains omitted to be marked.

148. Bargains should be quoted in the order in which they are made; but the clerks of the House may, with the concurrence of a member of the committee, quote omitted bargains, if notified before one o'clock, in the order in which they occurred, upon a written application from the buyer and the seller, stating the amount, the time when, and the price at which, such bargains were made; and such application shall be filed and laid before the committee at their next meeting. The above regulation applies likewise to all bargains done between one and three o'clock.

Prices not to be expunged without authority.

149. A price inserted in the official list shall not be expunged, without the authority of the chairman, deputy chairman, or two members of the committee.

NOTE.—As to the Official List, see the note to Rule 142.

FAILURES.

Public declaration of defaulters.

150. A member unable to fulfil his engagements, shall be publicly declared a defaulter by direction of the chairman, deputy chairman, or any two members of the committee.

NOTE.—It will be observed from Rule 151 that a default upon the Stock Exchange does not necessarily follow from insolvency or bankruptcy. The cases must, however, be very rare in which insolvency—and much more bankruptcy—is not followed by a default, and for general purposes they may probably be taken to be the same thing. A general outline of the results of a default and of insolvency will be found on pp. 45-50, *ante*.

A broker's default is often occasioned through no fault on his own part, but through inability or neglect on the part of his principal to pay what is due to him. To some extent, in these cases, the broker has the remedy in his own hands. For where a principal neglects to keep up a sufficient margin to his account, or to put up fresh cover when requested by his broker to do so, the practice of the Stock Exchange permits the

broker to close the client's account, and this practice is approved by the law: *Davis v. Howard* (1890), 24 Q.B.D. 691; 59 L.J. Q.B. 133; *Lilley v. Rankin* (1886), 56 L.J. Q.B. 248; 55 L.T. 814; and see p. 122, *ante*. And where the principal becomes bankrupt the broker is entitled to sell securities bought with his own money, and to prove in the client's bankruptcy for any moneys that may remain due to him after such sale; see *Lacey v. Hill, Scrimgeour's Claim* (1873), 8 Ch. 921; 42 L.J. Ch. 657; 29 L.T. 281; 21 W.R. 857; *Crowley's Claim* (1874), L.R. 18 Eq. 182; 43 L.J. Ch. 551; 30 L.T. 481; 22 W.R. 586. If the broker is declared a defaulter, he is not entitled to close his client's account without informing him of a custom whereby the client has the right to insist on carrying out his contract with the jobber either personally or through the intervention of another broker: *Duncan v. Hill* (1873), L.R. 8 Ex. 242; 42 L.J. Ex. 179; 29 L.T. 268; 21 W.R. 797. See the above cases more fully treated on pp. 47, 48, 125, *ante*.

151. A member declared a defaulter in the Stock Exchange, or a member who may become a bankrupt, or be proved to be insolvent although he may not be at the same time a defaulter in the Stock Exchange, ceases to be a member. Defaulters, bankrupts, etc., cease to be members.

NOTE.—See note to the preceding rule.

152. When a member shall give private intimation to his creditors of his inability to fulfil his engagements, the creditors shall not make any compromise with such defaulter, but shall immediately communicate with the chairman, deputy chairman, or two members of the committee, in order that the member in default may be immediately declared; and in case the committee shall obtain knowledge of any private failure, the name of the defaulter shall be publicly declared. Private failures.

153. A member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or securities received from such defaulter, provided he shall be declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the subsequent creditors. Any arrangement for settlement of claims, in lieu of *bonâ fide* money payment on the day when such claims become due, shall be considered as a compromise, subject to the provisions of this rule. Liability of persons who connive at a private failure.

154. A member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase or sale of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling Receiving prospectively claims upon a defaulter.

the transaction for which the consideration was received, shall (in case of the failure of the member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place.

Equality
of right
between
difference
creditors.

155. A creditor receiving, under any circumstances, a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others.

Priority of
claim by
difference
creditors.

156. Creditors for differences shall have a prior claim on all differences received by, or due to, a defaulter's estate.

NOTE.—The fund formed by the payment to the official assignee of the differences due to a defaulter's estate at the time of his default, is an artificial fund which cannot be claimed by the trustee in bankruptcy where the defaulter at the same time is declared a bankrupt: *Ex parte Grant, In re Plumbly* (1880), 13 Ch. D. 667; 42 L.T. 387; 28 W.R. 755. But where any part of the general assets of the bankrupt have come into the hands of the official assignee, the trustee in bankruptcy is entitled to recover such part: *Tomkins v. Saffery* (1877), 3 App. Cas. 213; 47 L.J. Bk. 11; 37 L.T. 758; 26 W.R. 62.

Under Rule 168, non-members as well as members are permitted to share in the distribution of these differences, provided their claims are admitted by the creditors or the committee, and they may be represented at meetings of the creditors by any member whom they may choose.

Claims for
securities
delivered,
and not
paid for.

157. Members not receiving due payment for securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid *pro ratâ*, and preferentially, out of assets resulting in any manner from such securities, or derived from the defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the defaulter.

Loans on
securities
valued
below the
market-
price.

158. In the case of loans of money made upon securities valued at less than the market-price, the lender shall realize his securities within three clear days (unless the creditors consent to a longer delay), or take them at a price to be fixed by the official assignees (with appeal to any two members of the committee.) Should the security be insufficient, the difference may be proved against the defaulter's estate.

In the Irish case of *Hamilton v. Young* (1881), 7 L.R. Ir. 289, it has been held that a custom among brokers to take over, at the market price, securities pledged for money lent where the market would be unduly depressed by their sale, is unreasonable and unenforceable against persons who have not received express notice of it. In the case of this rule, however, a plea of unreasonableness would be inadmissible, as the borrower will have had express notice of its provisions. And the principle of *Hamilton v. Young* perhaps requires some qualification since the recent decision of *Walter v. King*, the *Times*, March 10, 1897, for which see p. 102, *ante*.

NOTE.—As to loans generally, see chap. xii.

159. No loan without security shall be admitted as a claim on the differences of a defaulter's estate; nor shall any such loan, when of longer duration than two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day, he shall refund the amount so received for the benefit of the defaulter's estate.

Loans
without
security.

160. Differences allowed to remain unpaid for more than two business days beyond the day on which they become due, cannot be proved against a defaulter's estate, or set off against any difference due to a defaulter at the time of his failure. Differences overdue and paid previous to the day of default are not to be refunded.

Differences
on old
trans-
actions.

161. The committee will not recognize any claim on a defaulter's account that does not rise from a Stock Exchange transaction.

Claims not
on Stock
Exchange
transac-
tions.

162. No defaulter shall be re-admitted, who shall not, if required, give up the name of any principal indebted to him, or who, within fourteen days from the date of his failure, shall not have delivered to the official assignees, or to his creditors, his original books and accounts, and the statement of the sums owing to, and by him, in the Stock Exchange, at the time of his failure.

Surrender
of books
and names
of prin-
cipals.

NOTE.—As to re-admission of defaulters, see Rule 35.

163. A member, having compounded with his creditors, and being subsequently declared a defaulter, shall not be eligible for re-admission for six months, and should he be declared in consequence of his having so compounded, his sureties shall not be called upon to pay their security money.

Composi-
tion pre-
vious to
failure.
Release of
sureties.

NOTE.—As to re-admission of defaulters, see Rule 35. And as to a member's sureties, see Rule 22.

Payment to
creditors
before re-
admission
of 6s. 8d.
in the £ on
balance
loss.

164. A defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

NOTE.—See note to the preceding rule.

Defaulter
passing or
retaining
tickets.

165. A member who passes or retains a ticket for shares or stock, whereby loss is incurred or increased, and who shall be declared a defaulter in that account, shall not be eligible for re-admission for at least one year from the date of such default, provided it be proved to the satisfaction of the committee that he knew himself to be insolvent at the time of passing or retaining the ticket.

NOTE.—As to re-admission of defaulters, see Rule 35. Where on an application for re-admission a sub-committee is appointed to investigate a defaulter's conduct, etc., they are specially instructed to see whether there has been a violation of this rule. See Rule 171, par. 4.

Business
for a
defaulter.

Business
with a
defaulter.

166. No member shall carry on business for a defaulter for his benefit, without the consent of the creditors and the sanction of the committee. No member shall deal with a defaulter on his own account before his re-admission to the Stock Exchange.

Business
for prin-
cipals
who are
defaulters
to other
members.

167. No member shall transact business for a principal who, to his knowledge is in default to another member, unless such person shall have made a satisfactory arrangement with his creditors.

Claims
of non-
members
admitted
against
defaulters.

168. Non-members shall be allowed to participate in defaulters' estates, provided their claims be admitted by the creditors, or, in case of dispute, by the committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any member whom he may select.

Claims not
to be sold
to non-
members.

169. No member, being a creditor upon a defaulter's estate, shall sell, assign, or pledge his claim on such estate, to a non-member, without the concurrence of the committee; and such assignment shall be immediately communicated to the official assignees.

Dividends
due to
deceased
creditors.

170. If a creditor of a defaulter be dead, the dividend due to him shall be paid to his legal representative; but if the creditor himself be a defaulter, the dividend due to him shall be paid to his creditors.

Duties of
sub-com-
mittee.

171. Upon any application for the re-admission of a defaulter, a sub-committee, of not more than three members, to be chosen in

alphabetical rotation, shall investigate his conduct and accounts; and no further proceedings shall be taken by the committee with regard to his re-admission, until the report of such sub-committee shall have been submitted, together with a balance sheet of the defaulter's estate, signed by himself.

The attention of the sub-committee shall be directed—

1st—To ascertain the amount of the greatest balance of shares or stock open at any time during the account, the current balance at his bankers, as well as the balance of shares or stock open at the time of failure; and whether the transactions were on his own account, or on account of principals, specifying the amount of each respectively.

2nd—To ascertain the total amount of money paid by him; specifying the sums collected in the Stock Exchange; and those received from principals; and the money or other property brought forward by himself.

3rd—To ascertain the conduct of the defaulter preceding and subsequent to his failure; and to inquire of the official assignees whether any matter, prejudicial or otherwise to the defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th—To ascertain whether the defaulter has violated Rule 165.

172. The re-admission of defaulters shall be in two distinct classes :—

The *first* class to be for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the regulations of the House has been practised; where the operations have been in reasonable proportion to the defaulter's means or resources; and where his general conduct has been irreproachable.

The *second* class, for cases marked by indiscretion, and by the absence of reasonable caution.

The decision of the committee on the re-admission of a defaulter shall remain posted in the Stock Exchange for thirty days.

NOTE.—See also Rule 35.

173. Every defaulter, bankrupt, or insolvent (applying for re-admission) shall furnish the sub-committee with every information they may require.

Classes
under
which
defaulters
are re-
admitted.

Defaulters
to furnish
informa-
tion.

OFFICIAL ASSIGNEES.

Appoint-
ment of
official
assignees.

174. Two or more members shall be appointed annually by the committee, to act as official assignees, whose duty it shall be to obtain from a defaulter his original books of account, and a statement of the sums owing to and by him, to attend meetings of creditors, to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange.

Official
assignees
to give
security.

175. Each official assignee shall find security amounting to £1000 from two or more members of the Stock Exchange. In the event of any default or misappropriation by either assignee of funds or property entrusted to his care, or of any other act of dishonesty on his part, each of his sureties shall pay, under direction of the committee, such sum as he shall have guaranteed.

Division
of assets
amongst
creditors.

176. The assignees shall collect and pay the assets to the credit of their joint account at a banker's, and shall distribute the same as soon as possible.

NOTE.—In the opinion of Lord Blackburn, the word “assets,” as used in this rule, means the whole of a defaulter's available property; see *Tomkins v. Saffery* (1877), 3 App. Cas. 213; 47 L.J. Bk. 11.; 37 L.T. 758; 26 W.R. 62. But in view of the subsequent decision of the Court of Appeal in *Ex parte Grant, In re Plumby* (1880), 13 Ch. D. 667; 42 L.T. 387; 28 W.R. 755, that in case of a bankruptcy occurring at the same time as a default, the trustee in bankruptcy is entitled to recover from the official assignee any part of the defaulter's general assets, as distinguished from differences due to him from Stock Exchange creditors, with which the assignee is entitled to deal, it may be doubted whether the word would not be better confined to the fund which the assignee may lawfully distribute.

Assignees
to fix
prices.

177. In every case of failure, the official assignee shall publicly fix the prices current in the market immediately before the declaration, at which prices all persons having accounts open with the defaulter shall close their transactions by buying of or selling to him such stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to, or claimed from the official assignees. In the event

of a dispute as to the prices named, they shall be fixed by two members of the committee.

NOTE.—The amount of the differences thus fixed by the official assignee as due to a Stock Exchange creditor is a “liquidated sum” within the meaning of sec. 6 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), and will support a bankruptcy petition by a creditor against a defaulter; see *Ex parte Ward* (1882), 22 Ch. D. 132; 52 L.J. Ch. 73; 48 L.T. 332; 31 W.R. 112. The corresponding section of the Consolidating Act of 1883 (46 & 47 Vict. c. 52), is sec. 6 (1 (b)), to which the above case is equally applicable.

See also the notes to Rule 156.

178. The official assignees shall not claim differences on a defaulter's estate, until they become due. Differences not to be claimed until due.

NOTE.—The time intended to be expressed by the word “due” in this rule is perhaps not very clear. But the meaning of the rule appears to be that although all contracts made with a defaulter are closed at the prices current at the time of the default, the differences shown to be due to the defaulter's estate by such prices cannot be claimed until the date at which the contract would be completed in the ordinary course.

179. The official assignees shall not admit any claims upon a defaulter's estate arising out of transactions which are stated in the rules as not recognized until all other claims have been paid in full, but they shall forthwith collect and distribute amongst the creditors all assets arising from such transactions. Claims not admitted.

NOTE.—See Rules 60, 62, 63, 79, 90, 93, 112.

180. Once in every month, the official assignees shall lay before the committee an account of the balances in their hands belonging to defaulters' estates, and the committee shall order such balances as they think fit to be paid over to the account of the trustees of the Stock Exchange Benevolent Fund, subject to recall by the committee for distribution amongst creditors, or for payments by or to the official assignees which have been authorized by the committee. Statements to be furnished to the committee by assignees.

A statement of all sums so paid over, and of the amount remaining in the hands of the trustees of the Stock Exchange Benevolent Fund on the thirty-first of December in every year, shall be furnished by the official assignees, and deposited in the committee-room, for the inspection of the members of the Stock Exchange.

On the first of March, in each year, the official assignees shall lay before the committee a statement of all dividends paid during the last year on each defaulter's estate.

Every defaulter's estate shall be registered in a book, to be kept by the official assignees. A register of defaulter's accounts to be kept.

Scale of
remunera-
tion to
assignees.

181. The scale of remuneration to the official assignees shall be as follows:—

From £1 to £1000 collected	...	5 per cent.
From £1000 to £5000	... ..	2½ do.
From £5000	... ..	1½ do.

Sums received from the estate of another defaulter upon the same settlement and redistribution, shall be charged with half the above percentages.

➤ In case of distribution of funds not chargeable under the above scale, and where exceptional duties have been performed by the official assignees, the Committee for General Purposes shall decide, upon appeal of the official assignees, whether any or what special allowances shall be made to them.

APPENDIX B.

MEMORANDUM UNDER HAND ACCOMPANYING AN EQUITABLE MORTGAGE OF SECURITIES.¹

London,
189-.

To A B² of , in the county of ,³

I hereby deposit with you the securities in the schedule hereto annexed as collateral security for the sum of £ , which you are advancing to me, together with interest thereon at the rate of £ per cent. per annum payable ,⁴ and in consideration of any future advances which you may make to me, together with such interest thereon as may be agreed upon.

It is agreed that the current market price of the securities held by you shall, at all times during the continuance of the loan, represent a value exceeding by £ per cent. the amount outstanding in respect of such loan and interest thereon; and if at any time the value of the securities in your hands shall fall below the margin of £ per cent., I hereby undertake, on notice from you, to provide you with additional

¹ See Stamp Act, 1891, ss. 22, 23. This form is subject to necessary modifications, according to the agreement of the parties. The Bank of England, and many of the principal banks, have printed forms of their own. The Bank of England will not receive applications for loans after 2.30 p.m. on ordinary days, or after 1 p.m. on Saturdays.

² The mortgagee.

³ Insert description of mortgagee, *e.g.* solicitor.

⁴ Quarterly, or half-yearly, or as the case may be.

security to your satisfaction, or to pay you such sum as shall restore the said margin even before the said day of . And in the event of my making default in payment of any of the sums which are hereby secured when the same shall respectively become due, I authorize you forthwith, or at any time thereafter, to realize the said securities or any part thereof, and to pay yourself the amount due to you, with proper costs and expenses of realization and all other proper and usual charges, I hereby undertaking to execute and do all necessary deeds and things which may reasonably and properly be required by you to render this authority effective. And I hereby declare that I have a good right to deposit with you the said securities, and to execute and do such deeds and things when called upon.

This agreement is to apply not only to the said securities, but to any securities which may by consent be substituted for the same.

(Signature of mortgagor) _____

Sixpenny ¹
stamp.

The schedule above referred to

UNDERTAKING UNDER HAND ONLY QUALIFYING A DULY STAMPED TRANSFER.²

London,
189-.

To C. D.³ of , in the county of ,⁴

I hereby acknowledge that you have transferred to me the legal title to the securities mentioned in the schedule hereto annexed by way of security for the repayment on the day of next of the sum of £ , which I have this day advanced to you, together with interest thereon at the rate of £ , payable ,⁵ as well as for any further sum or sums of money which I may advance to you, together with interest thereon at such rate as may be agreed upon.

It is agreed that the current market price of the securities held by me shall, at all times during the continuance of the loan, represent a

¹ The stamp must be cancelled by the person executing the agreement; see the Stamp Act, 1891, s. 22.

² Stamp Act, 1891, s. 23, subs. 2. This form is subject to necessary modifications, according to the agreement of the parties.

³ The mortgagor.

⁴ Insert description, *e.g.* gentleman.

⁵ Quarterly, or half-yearly, or as the case may be.

value exceeding by £ per cent. the amount outstanding in respect of such loan and interest thereon; and that, if at any time the value of the securities in my hands shall fall below the margin of £ per cent., you undertake, on notice from me, to provide me with additional security to my satisfaction, or to pay me such sum as shall restore the said margin even before the said day of ; and that, in the event of your failing to pay any of the sums aforesaid, when the same shall respectively become due, you authorize me forthwith, or at any time thereafter, to realize the said securities or any part thereof, and to pay myself the amount due to me, with proper costs and expenses of realization and all other proper and usual charges. And I hereby undertake, upon payment of all sums due to me in respect of principal and interest, to execute and do all necessary deeds and things to re-transfer to you the legal title in the said securities.

This agreement is to apply not only to the said securities, but to any securities which may by consent be substituted for the same.

(Signature of mortgagee) _____

Sixpenny
stamp.

The schedule above referred to

¹ The stamp must be cancelled by the person executing the agreement; see the Stamp Act 1891. s. 22.

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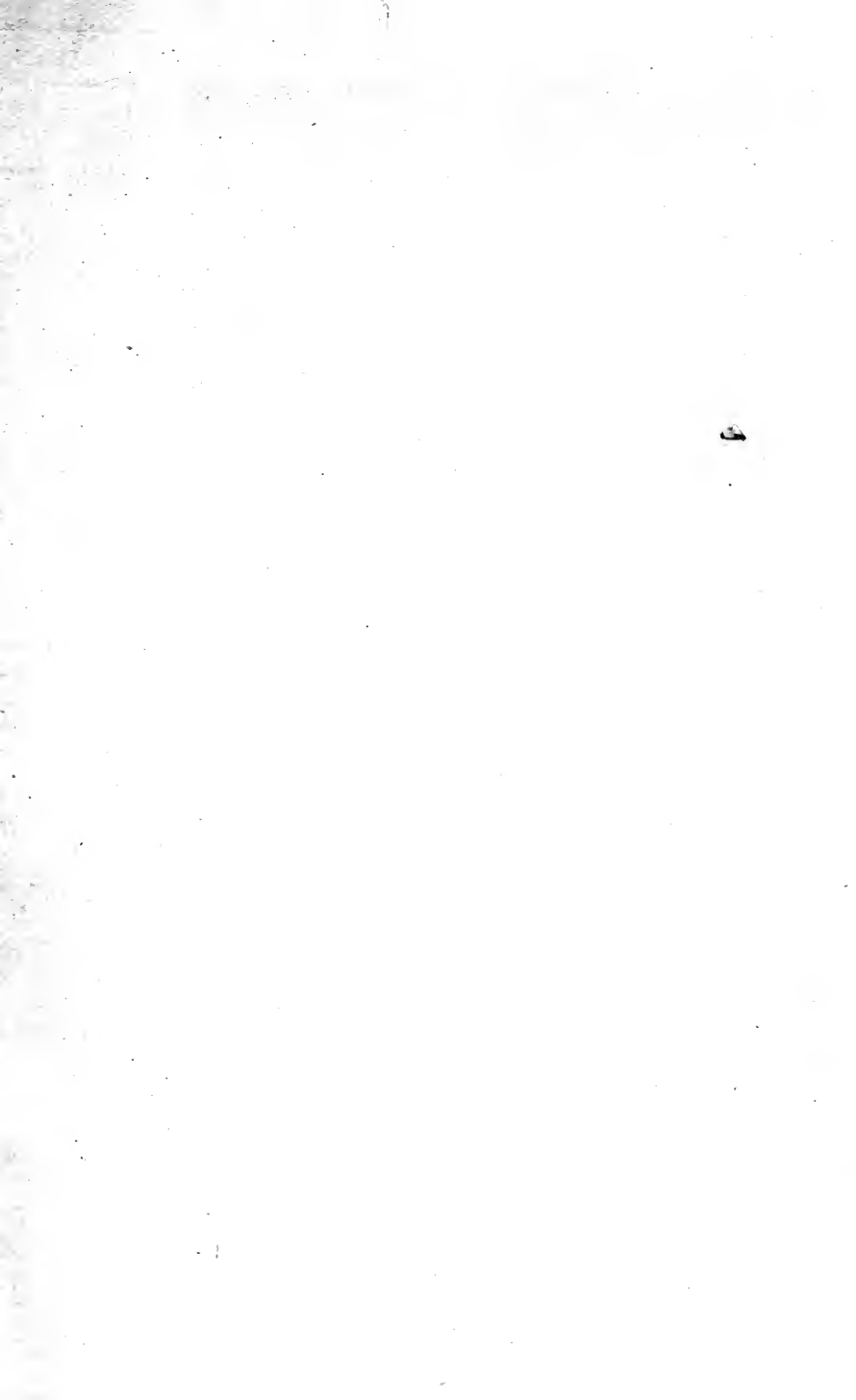
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